VOTING RIGHTS ACT: SECTION 5 OF THE ACT —HISTORY, SCOPE, AND PURPOSE

HEARING

BEFORE THE

SUBCOMMITTEE ON THE CONSTITUTION

OF THE

COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

ONE HUNDRED NINTH CONGRESS

FIRST SESSION

OCTOBER 25, 2005

Serial No. 109–79
Volume II

Printed for the use of the Committee on the Judiciary

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CONTENTS

OCTOBER 25, 2005

OPENING STATEMENT

WITNESSES

APPENDIX

MATERIAL SUBMITTED FOR THE HEARING RECORD

APPENDIX (Continued)

Material Submitted for the Hearing Record

APPENDIX TO THE STATEMENT OF BRADLEY J. SCHLOZMAN: COPIES OF OBJECTION LETTERS, BY STATE, IN WHICH THE ATTORNEY GENERAL INTERPOSED AN OBJECTION UNDER SECTION 5 FROM 1980 THROUGH THE PRESENT (OCTOBER 17, 2005), INCLUDING SOME LETTERS RESPONDING TO REQUESTS TO RECONSIDER AN OBJECTION AND SOME LETTERS WITHDRAWING OBJECTIONS *(CONTINUED)*

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

MAR 1 1982

William B. Trevorrow, Esq.
Guilford County Attorney
Post Office Box 3427
Greensboro, North Carolina 27402

Dear Mr. Trevorrow:

This is in reference to the establishment of residency districts for the election of commissioners in Guilford County, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. Your submission was completed on December 30, 1981.

We have given careful consideration to the information which you have provided, as well as information and comments from other interested parties. In the course of our analysis, we have noted particularly the use of "single shot" voting in Guilford County elections, the existence of racially polarized voting and the maintenance of an at-large election system.

The proposed residency districts would operate essentially as numbered posts, separating what would otherwise be one contest for several seats into several individual election contests. When placed in the context of an at-large election system and the presence of racially polarized voting, the imposition of residency districts significantly decreases opportunities for minority voters to elect a representative of their choice. As the United States District Court for the Eastern District of North Carolina has noted:

> In a true at large election, if the majority spreads its votes around and the minority single shot votes, the minority strength is concentrated, thus increasing their chance of electing. However, if the minority candidate is forced to run against a specific candidate for a specific seat, the majority can readily identify for whom they must vote in order to defeat the minority candidate.

Dunston v. Scott, 336 F. Supp. 206, 213 n. 9 (E.D. N.C. 1972.)

Furthermore, we note that the county's stated purpose in establishing residency districts for its commissioner posts is to guarantee county-wide representation on the county commission. While that purpose is certainly a legitimate one, there are other means of altering the election scheme, such as a single-member district election system, that will not, as the imposition of residency districts would do, result in a "retrogression" for Guilford County's black voters. See Beer v. United States, 425 U.S. 130 (1976).

Under Section 5 of the Voting Rights Act the submitting authority has the burden of proving that a submitted change has no discriminatory purpose or effect. See, e.g., Georgia v. United States, 411 U.S. 526 (1973). see also Section 51.39(e) of the Procedures for the Administration of Section 5 (46 Fed. Reg. 878). In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that that burden has been sustained in this instance.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that this change has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color or membership in a language minority group. In addition, the Procedures for the Administration of Section 5 (Section 51.44, 46 Fed. Reg. 878) permit you to request the Attorney General to reconsider the objection. However, until the objection is withdrawn or the judgment from the District of Columbia Court is obtained, the effect of the objection by the Attorney General is to make the establishment of residency districts for the election of commissioners in Guilford, North Carolina, legally unenforceable.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us within twenty days of your receipt of this letter of the course of action Guilford County plans to take with respect to this matter. If you have any questions concerning this letter, please feel free to call Carl W. Gabel (202-724-8388), Director of the Section 5 Unit of the Voting Section.

Sincerely,

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

U.S. Department of Justice
Civil Rights Division

Office of the Assistant Attorney General
Washington, D.C. 20530

19 APR 1982

Jerris Leonard, Esquire
Jerris Leonard & Associates, P.C.
900 Seventeenth Street, NW
Suite 1020
Washington, D.C. 20006

Dear Mr. Leonard:

This is in reference to your submission on behalf of the State of North Carolina of the redistricting plans for the North Carolina Senate (Senate Bill 1) and the State House of Representatives (House Bill 1), and a law changing the candidate filing period and primary election dates for 1982 (House Bill 3). Your submission, pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c, was received on February 23, 1982, and was supplemented with requested additional information received on April 6, 1981. As requested, we have given your submission expedited consideration.

At the outset, we believe it is appropriate to review recent Section 5 objections interposed by the Attorney General to voting changes in North Carolina, inasmuch as the bases for those objections provide a relevant context for our review of the submitted Senate and House redistricting plans. As you know, on November 30, 1981, an objection was interposed to a 1967 amendment to the North Carolina Constitution that prohibited the State from dividing counties during redistricting of the House and Senate. Our analysis of that amendment showed that adherence to the prohibition necessarily required the use of large multi-member districts, which in turn had the predictable effect of submerging the voting strength of cognizable concentrations of black citizens throughout the State.

On December 7, 1981, objections were interposed to the Senate reapportionment plan and to the Congressional redistricting plan. With respect to the Senate plan, our analysis showed that the State's reliance on the constitutional prohibition against dividing counties had resulted in a submergence of black voting strength in several covered areas of the State. Subsequently, on January 20, 1982, an objection was interposed to the House plan because it, too, would have resulted in a submergence of black voting strength. Both the Senate and House plans had employed large multi-member districts, a forseeable consequence of the State's adherence during redistricting to the 1967 constitutional amendment.

Following these objections to the 1967 constitutional amendment, and to the earlier reapportionment plans, the State of North Carolina formulated the new redistricting plans under submission here. In contrast to the earlier objected-to plans, the plans developed in 1982 by the State divide numerous counties. Consequently, a simple comparison of the racial statistics in the "old" and the newly-proposed plans does little to shed light on whether the submitted plans "fairly reflect the strength of black voting power as it exists." State of Mississippi v. United States, 490 F. Supp. at 581.

The submitted plans are a substantial improvement over the objected-to plans because, in several covered areas, the State has endeavored to create districts in which black voters are now given a reasonable opportunity to elect candidates of their choice where they had none before. The Senate and House plans in Guilford County create such districts, for example. On the other hand, each plan continues to have a single objectionable feature under Section 5, as those plans affect some of the covered counties. We briefly describe below the bases for these objections.

With respect to the submitted Senate plan, the State proposes to create a majority black district in the northeast area. This district, No. 2, contains a 51.7% black population. Our analysis shows that during the Senate Redistricting Committee's consideration of this district it was widely recognized that at least a 55% black population was necessary in this district if black voters were to have a reasonable chance of electing a candidate of their choice and the record before us contains substantial evidence that such a compact, non-gerrymandered district easily could be drawn in this area. Notwithstanding these facts, however, the State enacted a plan which, as noted above, provides for only a 51.7% black population percentage.

Respecting the House plan, the State proposes to create one single-member district in Cumberland County, with the remainder of the county's population to elect 4 representatives in a multi-member district. While the single-member district appears to be overwhelmingly black in its actual voting population (due to the inclusion of traditionally non-voting population from Fort Bragg), the State's plan leaves nearly three-fourths of Fayetteville's black community with their voting strength submerged in the white majority multi-member district. Several reasonable alternatives to the State's proposal are available, including the drawing of a second single-member district wherein black voters would have a fair opportunity of, at a minimum, strongly influencing the outcome of the election in that district.

In light of the above, I am unable to conclude, as I must under Section 5 of the Voting Rights Act, that the Senate and House reapportionment plans are free of a racially discriminatory purpose and effect. Accordingly, on behalf of the Attorney General, I must interpose an objection to both plans.

Finally, the State has proposed to change the candidate filing period and to change the date on which primary elections will be held. Those changes are contingent upon the State obtaining preclearance of the Senate and House redistricting plans, an event which has not yet taken place. Accordingly, it is our view that these changes are not ripe for Section 5 review. See, e.g., 28 C.F.R. 51.7. We stand ready to examine these changes on an expedited basis together with any modifications to the Senate and House plans that the State may wish to make.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that these voting changes have neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. In addition, the Procedures for the Administration of Section 5 (28 C.F.R. 51.21(b) and (c), 51.23, and 51.24) permit you to request the Attorney General to reconsider the objection. However, until the objection is withdrawn or the judgment from the District of Columbia court is obtained, the effect of the objection by the Attorney General is to make the redistricting plans for the Senate and State House of Representatives legally unenforceable in the covered counties.

If you have any questions concerning this letter, please feel free to call Mr. J. Gerald Hebert, the attorney in the Voting Section (202-724-6292) who is assigned to this matter.

Sincerely,

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

Jesse L. Warren, Esq.
City Attorney
Drawer W-2
Greensboro, North Carolina 27402

JUN 21 1982

Dear Mr. Warren:

This is in reference to the three annexations (November 16, 1981), to the City of Greensboro in Guilford County, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. Your submission was completed on April 20, 1982.

We have given careful consideration to the information which you have provided, as well as information and comments from other interested parties. In the course of our analysis, we have noted particularly the existence of racially polarized voting in Greensboro's municipal elections. We also have taken note of the margin of victory for successful black candidates in those elections. Our analysis reveals that the decrease in Greensboro's black population percentage as a consequence of the proposed annexations diminishes black voting strength in the enlarged city. The resultant impact of the annexation, i.e., the addition of approximately 11,000 white citizens and only about 1,000 black citizens, given the existence of racially polarized voting, could easily eliminate the limited success black candidates have enjoyed in past city council elections, and most certainly would lead to a retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise. See Beer v. United States, 425 U.S. 130, 140-141 (1975).

We also note that, in 1980, the city held a referendum on whether to retain the at-large method of election or switch to a ward system. Black voters overwhelmingly supported a change to ward-type elections, but voters chose the at-large system by only 304 votes in a referendum election marked by

racially polarized voting. The proposed expansion to the city would adversely impact on the potential ability black voters have to participate in Greensboro's municipal affairs on an equal footing with white voters by further diluting the voting strength of the black electorate.

In City of Richmond v. United States, 422 U.S. 358, (1975), the Supreme Court "held that an annexation reducing the relative political strength of the minority race in the enlarged city as compared with what it was before the annexation is not a statutory [Section 5] violation as long as the past annexation election system fairly recognizes the minority's political potential". We are unable to conclude that the at-large election system recognizes the political potential of black voters in Greensboro, as a fairly drawn ward-type plan would do.

Under Section 5 of the Voting Rights Act the submitting authority has the burden of proving that a submitted change has no discriminatory purpose or effect. See, e.g., Georgia v. United States, 411 U.S. 526 (1973); see also Section 51.39(a) of the Procedures for the Administration of Section 5 (46 Fed. Reg. 878). In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that that burden has been sustained in this instance. Accordingly, I must interpose an objection to the three annexations on behalf of the Attorney General. The annexations are therefore legally unenforceable insofar as they affect voting.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that these changes have neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color or membership in a language minority group. In addition, the Procedures for the Administration of Section 5 (Section 51.44, 46 Fed. Reg. 878) permit you to request the Attorney General to reconsider the objection. However, until the objection is withdrawn or the judgment from the District of Columbia Court is obtained, the effect of the objection by the Attorney General is to make the annexations in Guilford County, North Carolina, legally unenforceable.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us within twenty days of your receipt of this letter of the course of action the City of Greensboro plans to take with respect to this matter. If you have any questions concerning this letter, please feel free to call Carl W. Gabel (202-724-8388), Director of the Section 5 Unit of the Voting Section.

Sincerely,

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

Civil Rights Division

Office of the Assistant Attorney General Washington, D.C. 20530

8 APR 1983

Jesse L. Warren, Esq.
City Attorney
Drawer W-2
Greensboro, North Carolina 27402

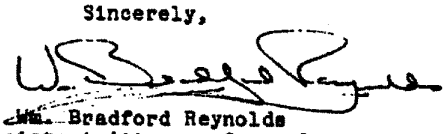
Dear Mr. Warren:

This is in reference to the change in the method of electing members of the city council from six at-large to five elected from single-member districts and three at-large; the increase in the size of the council from six to eight; and alternative districting plans for the City of Greensboro in Guilford County, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. This also acknowledges your request that the Attorney General reconsider his June 21, 1982, objection to the three annexations of November 16, 1981. Your submission and your request were received on February 9, 1983, and supplemented on March 30, 1983.

On March 29, 1983, we were advised by Mr. Charles S. Rhyne, Special Counsel to the City of Greensboro, that the General Court of Justice, Superior Court Division, Guilford County, North Carolina, had decided that the annexation ordinances and the procedures followed by the City of Greensboro in enacting the annexation ordinances are legal under state law. Thus, it is our understanding that, even though you initially sought preclearance of alternative plans for the districting of the city, the only districting plan which now is capable of being implemented is the one which encompasses the annexations which were the subject of the litigation. Accordingly, the Attorney General will make no determination with respect to the districting plan which is based on the preannexation boundaries of the city. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.20(a)).

With respect to the districting plan which includes the annexed areas; the change in the method of electing members of the city council from six at-large to five elected from single-member districts and three at-large; and the increase in the size of the council from six to eight, the Attorney General does not interpose any objections. In addition, in view of these changes in the system for electing the city's governing body and pursuant to the reconsideration guidelines (28 C.F.R. 51.47), the objection interposed on June 21, 1982, is hereby withdrawn. However, we feel a responsibility to point out that Section 5 of the Voting Rights Act expressly provides that the failure of the Attorney General to object does not bar any subsequent judicial action to enjoin the enforcement of any of these changes. See also 28 C.F.R. 51.48.

Sincerely,



William Bradford Reynolds
Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

December 21, 1982

A. D. Ward, Esquire
Ward, Ward, Willey & Ward
P. O. Drawer 1428
New Bern, North Carolina 28560

Dear Mr. Ward:

This is in reference to the June 16, 1982, annexation of 1,064 acres to the City of New Bern in Craven County, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. Your submission was completed on October 22, 1982.

We have considered carefully the information you have provided, data obtained from 1980 Census reports, as well as information provided by other interested parties. At the outset, we note that, with but a single exception, no black (of the several who have run for office) has ever won election to the New Bern Board of Aldermen, which appears to be a result of a general pattern of racially polarized voting occurring in the context of New Bern's at-large election system with its residency and the majority vote requirements. Furthermore, our analysis of available data indicates that this annexation will reduce the city's minority population percentage by about 1.4 percent and, thus, will enhance the ability of the white majority to control the election of all members of the Board.

While the percentage decrease in the black population of the city is admittedly small, it is not without significance where, as is the case in New Bern, the minority community currently represents over 43 percent of the total population and with the proposed annexation its political strength would be reduced to just over 41 percent. City of Richmond v. United States, 422 U.S. 358 (1975); City of Rome v. United States, 446 U.S. 156 (1980).

If this were the city's only annexation, there would be cause for less concern. However, we are advised that the prospect of annexing additional areas adjacent to the city is a real one, and that such annexations could well have an additional impact on minority population percentages. In these circumstances, we find problemmatic the dilutive effect that the proposed annexation will have on minority voting strength in the City of New Bern, and we therefore remain of the view that Section 5 preclearance cannot obtain under the city's present at-large electoral system.

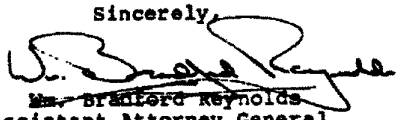
In interposing this objection on behalf of the Attorney General, I have taken into consideration several factors that bear special mention. First, the objection does not prohibit the city from providing city services to the annexed areas. In addition, it does not prohibit those citizens living in the area from enjoying all the benefits of annexation, other than participation in the electoral process -- and as to this last advantage, the next scheduled elections are some months away.

It is my understanding that well before those elections take place, the city board of aldermen is to consider a recommended change in the existing electoral system. We are advised that a special committee appointed last summer by the mayor has endorsed a single-member district plan. In addition an at-large, plurality vote system has been suggested. Should the city adopt a different electoral system that would afford minorities a more realistic opportunity to elect candidates of their choice, such a determination would respond to our present concerns and in all likelihood permit the Attorney General to withdraw the objection. We also note that Section 5 preclearance of future annexations, if any, will be enhanced if the city's method of election is one which fairly recognizes minority voting strength though additional voters be added to the city.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that this change is entitled to Section 5 preclearance. In addition, the Procedures for the Administration of Section 5 (28 C.F.R. 51.44) permit you to request the Attorney General to reconsider the objection. However, until the objection is withdrawn or the judgment from the District of Columbia Court is obtained, the effect of the objection by the Attorney General is to make the submitted annexation legally unenforceable. See also 28 C.F.R. 51.9.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action the City of New Bern plans to take with respect to this matter. If you have any questions concerning this letter, please feel free to call Carl W. Gabel (202-724-8388), Director of the Section 5 Unit of the Voting Section.

Sincerely,



William Bradford Reynolds
Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

March 28, 1983

Mr. David Overton
Town Administrator
P.O. Box 508
Windsor, North Carolina 27983

Dear Mr. Overton:

This is in reference to the establishment of residency districts for the election of commissioners and to the districting plan therefor in the Town of Windsor, Bertie County, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. Your submission was completed on January 26, 1983.

We have given careful consideration to the information which you have provided, as well as to information and comments from other interested parties. Our analysis reveals that the proposed residency districts would operate essentially as designated posts, separating what would otherwise be one contest for several seats into several individual head-to-head election contests. As a practical matter, such a system would likely amount to the imposition of a majority vote requirement in most instances.

Concerning such a situation the United States District Court for the Eastern District of North Carolina noted in Dunston v. Scott, 336 F. Supp. 206, 213 n. 9 (1972):

> In a true at-large election, if the majority spreads its votes around and the minority single shot votes, the minority strength is concentrated, thus increasing their chance of electing. However, if the minority candidate is forced to run against a specific candidate or candidates for a specific seat,

> the majority can readily identify for whom they must vote in order to defeat the minority candidate.

Thus, in the context of an at-large election system and the racially polarized voting which seems to exist in Bertie County, the imposition of residency districts would appear significantly to decrease the opportunities for minority voters to elect a representative of their choice. Such a result would constitute impermissible "retrogression" for the Town of Windsor's black voters. See Beer v. United States, 425 U.S. 130 (1976).

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has no discriminatory purpose or effect. See Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.39(e)). In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that that burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the establishment of residency districts and the implementing districting plan for the election of commissioners in the Town of Windsor.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that these changes have neither the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. In addition, the Procedures for the Administration of Section 5 (28 C.F.R. 51.44) permit you to request the Attorney General to reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the effect of the objection by the Attorney General is to make the establishment of residency districts and the districting plan legally unenforceable. 28 C.F.R. 51.9.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action the Town of Windsor plans to take with respect to

this matter. If you have any questions concerning this letter, please feel free to call Sandra S. Coleman (202-724-6718), Deputy Director of the Section 5 Unit of the Voting Section.

Sincerely,

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

16 JAN 1984

Joseph J. Harper, Jr., Esq.
Philips, Bourne, Harper & Keel
P. O. Drawer 1158
Tarboro, North Carolina 27886

Dear Mr. Harper:

This is in reference to House Bill No. 608 (1983) of the North Carolina General Assembly establishing double-member residency districts, increasing from six to seven school board members and the election of six members from residency districts with the seventh member to run countywide for the Edgecombe County Board of Education in Edgecombe County, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received the information to complete your submission on November 17, 1983.

We have given careful consideration to the information which you have furnished, as well as to information and comments from other interested parties. In regard to the increase from six to seven school board members and the at-large election of the seventh member, the Attorney General does not interpose any objections to the changes in question. However, we feel a responsibility to point out that Section 5 of the Voting Rights Act expressly provides that the failure of the Attorney General to object does not bar any subsequent judicial action to enjoin the enforcement of such changes. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.48).

With respect to the remaining changes, our analysis indicates that in the context of an at-large election system such as exists in the Edgecombe County school district, the proposed residency districts would operate essentially as designated posts, separating what has been a single contest for several seats into several contests for single positions on the

school board. In such a situation we note that when the black electorate is in the minority, as it is in the Edgecombe County school district, and racially polarized voting exists, as it seems to in the Edgecombe County School District, the opportunity to engage in single-shot voting offers minority voters a realistic chance to elect a candidate of their choice to office. Indeed, past success for the black electorate in Edgecombe County would seem to have occurred because several positions were open and the presence of a number of candidates caused the white vote to be split, thus allowing a candidate of the black voters' choice to win.

However, in the context of an at-large election system and the racially polarized voting which seems to exist in Edgecombe County, the imposition of the proposed residency districts would appear to decrease significantly the opportunities for minority voters to elect a representative of their choice. Such a result would constitute impermissible "retrogression" for black voters in the Edgecombe County school district. See Beer v. United States, 425 U.S. 130 (1976).

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has no discriminatory purpose or effect. See Georgia v. United States, 411 U.S. 526 (1973); see also 28 C.F.R. 51.39(e). In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that that burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the establishment of residency districts and the election of six members from residency districts for the Edgecombe County Board of Education.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that these changes have neither the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. In addition, Section 51.44 of the guidelines permits you to request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the effect of the objection by the Attorney General is to make the use of residency districts legally unenforceable. 28 C.F.R. 51.9.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action Edgecombe County School Board plans to take with respect to this matter. If you have any questions, feel free to call Sandra S. Coleman (202-724-6718), Deputy Director of the Section 5 Unit of the Voting Section.

Sincerely,

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

MAR 10 1986

M. H. Hood Ellis, Esq.
Wilson & Ellis
P. O. 1365
Elizabeth City, North Carolina 27909-1365

Dear Mr. Ellis:

This refers to the change in the method of election to four single-member districts and four at large with residency districts, the method of staggering the positions, the districting plan and the utilization since 1965 of the majority vote requirement in the City of Elizabeth City, Pasquotank County, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received the information to complete your submission on January 9, 1986.

The Attorney General does not interpose any objection to the 1965 adoption and subsequent use of the majority vote requirement. However, we feel a responsibility to point out that Section 5 of the Voting Rights Act expressly provides that the failure of the Attorney General to object does not bar any subsequent judicial action to enjoin the enforcement of such changes. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.48).

With regard to the other changes involved, we note at the outset that in order to obtain preclearance pursuant to Section 5, the city must demonstrate that the submitted voting procedures are nondiscriminatory in both effect and purpose. See Georgia v. United States, 411 U.S. 526 (1973); see also 28 C.F.R. 51.39(e). Our analysis confirms that the submitted voting procedures, when compared to the at-large election structure, will enhance the opportunity for black political participation and thus will not have a discriminatory effect within the meaning of Section 5. Beer v. United States, 425 U.S. 130, 141 (1976). We are unable to conclude, however, that the changes were not accomplished with the proscribed purpose.

Civil Rights Division

Office of the Assistant Attorney General — Washington, D.C. 20530

February 21, 1984

Richard J. Rose, Esq.
Spruill, Lane, Carlton, McCotter
& Jolly
P. O. Drawer 353
Rocky Mount, North Carolina 27802-0353

Dear Mr. Rose:

This is in reference to the eleven annexations to the City of Rocky Mount in Edgecombe and Nash Counties, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received the information to complete your submission on December 20, 1983.

We have considered carefully the information you have provided, data obtained from the 1980 Census, as well as information provided by other interested parties. At the outset, we note that, even though blacks constitute over 42 percent of the city's population, at no time has more than one black been elected to the city council, which appears to be the result of a general pattern of racially polarized voting occurring in the context of Rocky Mount's at-large election system with its residency and majority vote requirements. While our analysis of available data indicates that the proposed annexations will initially reduce the city's minority population by only 1.1 percent, the planned development of the areas to be annexed would over time most likely result in a substantially larger percentage dilution. In the context of the at-large election system that exists in Rocky Mount, we view this prospect as significantly enhancing the ability of the white majority to control the election of all councilmembers. The city must, in such circumstances, provide significant and credible nonracial justifications for these proposed annexations sufficient to offset the apparent discriminatory effect. This the city has failed to do, notwithstanding our request for further information.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has no discriminatory purpose or effect. See Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.39(e)). In light of

the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that that burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to these annexations.

Our analysis of these annexations, along with the past history of annexations to the City of Rocky Mount, lead us to note, also, that annexing additional areas to the city in the future likely will be problematic when the projected population of such annexations will have an additional adverse impact on minority voting strength. However, should the city adopt an electoral system that would afford minorities a realistic opportunity to elect candidates of their choice in the expanded city (see City of Richmond v. United States, 486 U.S. 156 (1980)), such a change would enhance the city's ability to obtain the required Section 5 preclearance of future annexations.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that these changes have neither the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. In addition, Section 51.44 of the guidelines permits you to request that the Attorney General reconsider the objection. However, until the objection is withdrawn or the judgment from the District of Columbia Court is obtained, the effect of the objection by the Attorney General is to make the annexations legally unenforceable. 28 C.F.R. 51.9.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action the City of Rocky Mount plans to take with respect to this matter. If you have any questions, feel free to call Sandra S. Coleman (202/724-6718), Deputy Director of the Section 5 Unit of the Voting Section.

Sincerely,

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

U.S. Department of Justice
Civil Rights Division

Office of the Assistant Attorney General Washington, D.C. 20530

May 9, 1985

Richard J. Rose, Esq.
Spruill and Spruill
P. O. Box 353
Rocky Mount, North Carolina 27802-00353

Dear Mr. Rose:

This refers to Ordinance No. O-85-11 which provides for seven single-member districts and to No. R-85-15, which provides for the districting plan for those districts, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. This also refers to our reconsideration of the February 21, 1984, objection to eleven annexations to the City of Rocky Mount in Edgecombe and Nash Counties, North Carolina. We received your submission on March 27, 1985.

The Attorney General does not interpose any objections to the changes contained in Ordinance Nos. O-85-11 and R-85-15. In addition, because the districting plan and related changes being precleared at this time provide a method of election which affords the minority group "representation reasonably equivalent to their political strength in the enlarged community" (City of Richmond v. United States, 422 U.S. 358, 370 (1975)), the objection interposed on February 21, 1984, to eleven annexations to the City of Rocky Mount is hereby withdrawn. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.45). However, we feel a responsibility to point out with respect to both the districting changes and the annexations that Section 5 of the Voting Rights Act expressly provides that the failure of the Attorney General to object does not bar any subsequent judicial action to enjoin the enforcement of such changes. See also 28 C.F.R. 51.48.

Sincerely,

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

May 16, 1984

Mr. Raymond P. Sykes
Chairman, Halifax County
Board of Elections
Route 2, Box 340
Whitakers, North Carolina 27891

Dear Mr. Sykes:

This refers to two statutes that changed the method of electing the Halifax County, North Carolina, Board of County Commissioners: (1) 1967 N.C. Sess. Laws 839, which provided for the May 4, 1968, special election, increased the length of terms for county commissioners from two to four years, and implemented staggered terms; and (2) 1971 N.C. Sess. Laws 681, which readopted the existing at-large election system with an increase in the number of county commissioners from five to six. The voting changes occasioned by these statutes were submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received the information to complete your submission on March 17, 1984.

We have given careful consideration to the information provided with your submission along with that provided by other interested parties. The Attorney General does not interpose any objection to the voting changes occasioned by 1967 N.C. Sess. Laws 839. Section 5 of the Voting Rights Act expressly provides, however, that the failure of the Attorney General to object does not bar any subsequent judicial action to enjoin the enforcement of such changes. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.48).

With respect to the voting changes occasioned by 1971 N.C. Sess. Laws 681 (hereinafter "Chapter 681"), we cannot reach a like conclusion. At the outset, we note that, even though Chapter 681 in large measure readopted the existing at-large election system, modification of that system by the addition of a sixth county commissioner to be nominated and

cc: Public File

elected from the Roanoke Rapids Township residency district (District 2) constitutes a change with respect to the method of electing the county commission as a whole. See City of Lockhart v. United States, 51 U.S.L.W. 4189 (U.S. Feb. 22, 1983).

Our analysis of Chapter 681 reveals that no black candidate has been elected to the county commission in this century and that racial bloc voting in Halifax County is severe and persistent. The use of residency districts precludes single-shot voting by black citizens, and a majority vote requirement applies to primary elections. According to statistics you have supplied, as of October 1983 only 50 percent of the eligible black voters were registered, whereas 67 percent of the eligible white voters were registered. Black citizens of Halifax County bear socioeconomic disadvantages not borne by white citizens that result from racial discrimination and impair the ability of blacks to participate effectively in the political process. And as found by the three-judge court in Gingles v. Edmisten, No. 81-803-CIV-5 (E.D. N.C. Jan. 27, 1984), "North Carolina [has] officially and effectively discriminated against black citizens in matters touching their exercise of the voting franchise...." Slip op. at 26.

While we have noted the submission's statement that Chapter 681 was adopted to remedy malapportioned residency districts, the county has presented no adequate explanation for adopting the method chosen. The county commission admittedly considered other alternatives but those other alternatives and the reasons(s) for their rejection have not been identified. Several obvious options, such as eliminating residency districts (thereby allowing single-shot voting) or adopting a single-member district election system, would have enhanced black voting strength yet apparently were rejected in favor of the Chapter 681 alternative which maintained black voting strength at a minimum level. There is no evidence that black citizens were consulted about the malapportionment issue, nor was it submitted to the voters in a referendum as has been the past procedure for modifying the method of electing the county commission.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has no discriminatory purpose or effect. See Georgia v. United States, 411 U.S. 526 (1973); see also 28 C.F.R. 51.39(e). In addition, a submitted change may not be precleared if it "so discriminates on the basis of race or color as to violate the Constitution" (Beer v. United States, 425 U.S. 130, 141 (1976)) or if we find that the plan violates Section 2 of the Voting Rights Act, as amended, 42 U.S.C. 1973; S. Rep. No. 97-417, 97th Cong., 2d Sess. 12 n. 31 (1982). Under these principles, and in view of the circumstances discussed above, we are unable to conclude, as we must under Section 5, that Chapter 681 meets the Act's preclearance requirements. Accordingly, on behalf of the Attorney General, I must interpose an objection to the changes occasioned by Chapter 681.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that these changes have neither the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. In addition, Section 51.44 of the guidelines permits you to request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the effect of the objection by the Attorney General is to make the Chapter 681 changes legally unenforceable. 28 C.F.R. 51.9.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action Halifax County plans to take with respect to this matter. If you have any questions, feel free to call Sandra S. Coleman (202-724-6718), Deputy Director of the Section 5 Unit of the Voting Section.

Because of related issues pending in United States v. Halifax County, C.A. 83-88-CIV-8 (E.D. N.C.), we are providing a copy of this letter to each member of the three-judge court and to counsel of record.

Sincerely,

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

September 21, 1984

Ms. Emma Lee Locklear
Chairperson, Robeson County
Board of Elections
P. O. Box 313
Lumberton, North Carolina 28359

Dear Ms. Locklear:

This refers to the consolidation of two voting precincts and the elimination of one polling place for Smiths Township in Robeson County, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your submission on July 23, 1984. Although we noted your request for expedited consideration, we have been unable to respond until this time.

We have considered carefully the information you have sent, data obtained from the 1980 Census, as well as information provided by other interested parties. At the outset, we note that on April 27, 1983, the county board of elections passed a resolution dividing Smiths Township into two different voting precincts and creating a new polling place in South Smiths, actions that were taken apparently for the convenience of voters in the southern part of the township. Those changes received Section 5 preclearance on July 8, 1983.

In the submission now before us, the polling place for South Smiths would be eliminated and the voters presently assigned to vote there would be assigned again to the polling place in the northern part of the township. Thus, the voters who currently vote at South Smiths would again be subjected to the inconvenience of having to travel a substantial distance to vote some eight miles away.

In spite of this added inconvenience to the largely minority electorate in this portion of the county, the county has advanced no compelling reason for the change. While we have noted that the county's stated reason for the consolidation is the avoidance of confusion, our analysis shows that any confusion that occurred likely was due to the county's failure adequately to notify voters about their new polling place when the township initially was divided into two precincts. However, our analysis shows it just as likely that any confusion which might have existed initially has been remedied during the course of intervening elections and that confusion is much more likely by again changing the polling place for approximately two-thirds of the township's voters.

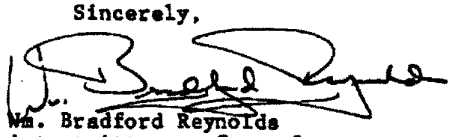
Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose or effect. See Georgia v. United States, 411 U.S. 526 (1973); Beer v. United States, 425 U.S. 130, 141 (1976); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.39(e)).

Since the consolidation of the precincts will result in added burdens on a significant portion of the Indian community in Robeson County, I am unable to conclude, as I must under the Voting Rights Act, that the county has met its burden in this instance. Accordingly, on behalf of the Attorney General, I must object to the consolidation of the voting precincts and the elimination of the South Smiths polling place.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that these changes have neither the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. In addition, Section 51.44 of the guidelines permits you to request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the effect of the objection by the Attorney General is to make the consolidation of voting precincts and the elimination of the South Smiths polling place legally unenforceable. 28 C.F.R. 51.9.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action Robeson County plans to take with respect to this matter. If you have any questions, feel free to call Carl W. Gabel (202-724-8388), Director of the Section 5 Unit of the Voting Section.

Sincerely,



Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

October 1, 1984

Kathleen Heenan McGuan, Esq.
The Farragut Building
900 Seventeenth Street, N.W.
Washington, D.C. 20006

Dear Ms. McGuan:

This refers to House Bill 2, Chapter 1 (1984), which provides for the apportionment of North Carolina House of Representatives Districts 8 and 70, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received information to supplement your submission on July 31, 1984, and again on September 28, 1984. While we have noted your request for expedited consideration of this submission, as you are aware questions concerning it have persisted and, thus, we have been unable to respond until this time.

We have considered carefully the information you have provided, as well as comments and information provided by other interested parties. The proposed districting, occasioned by the court's ruling in Gingles v. Edmisten, Civ. Action No. 81-803-CIV-5 (E.D. N.C. Jan. 27, 1984), creates one single-member district (69.1% black population) and one three-member district (29.6% black population) for the Edgecombe/Nash/Wilson County area. While this plan provides minorities with a realistic opportunity to elect a representative of their choice to the legislature from the single-member district involved, we also note that, during this redistricting process, another proposal (Plan N54), containing only single-member districts and providing for a second district in which the minority community likely would have a significant influence on the outcome of elections, was considered and rejected, reportedly to protect a white incumbent from such minority influence. In addition, we understand that a second three-member district proposal (Plan N62) was rejected for similar concerns when it was discerned that a

similar single-member district configuration would result should the State be required to subdivide that multimember district into single-member ones. The responses which, to date, have been forthcoming with respect to this claim have been conflicting.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has no discriminatory purpose or effect. See Georgia v. United States, 411 U.S. 526 (1973). If the evidence before us is conflicting and the Attorney General is unable to determine that the change does not have the prohibited purpose and effect, an objection must be interposed. See 28 C.F.R. 51.39(e). Because of the conflicting nature of the information we have, some of which only reached us on September 28, 1984, I cannot at this time conclude that the State has carried its burden. Therefore, on behalf of the Attorney General, I must interpose an objection to the apportionment of Districts 8 and 70 as reflected in House Bill 2. However, pursuant to our guidelines, 28 C.F.R. 51.45, we will continue our analysis of this matter to determine whether there is a basis for withdrawing the objection.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that these changes have neither the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the effect of the objection by the Attorney General is to make the apportionment of Districts 8 and 70 legally unenforceable. 28 C.F.R. 51.9.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action the State of North Carolina plans to take with respect to this matter. If you have any questions, feel free to call Sandra S. Coleman (202-724-6718), Deputy Director of the Section 5 Unit of the Voting Section.

Sincerely,

(Original signed by
Wm. Bradford Reynolds)

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

JAN 28 1985

Ms. Emma Lee Locklear
Chairperson, Robeson County
Board of Elections
P. O. Box 2159
Lumberton, North Carolina 28359

Dear Ms. Locklear:

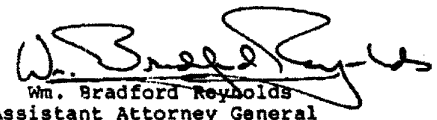
This refers to your request that the Attorney General reconsider the September 21, 1984, objection under Section 5 of the Voting Rights Act of 1965, as amended, to the consolidation of two voting precincts and the elimination of a polling place for Smiths Township in Robeson County, North Carolina. We received your initial request on October 18, 1984; supplemental information was received on October 24, and November 26, 1984.

In support of your request for reconsideration you have provided information showing the existence in the township of an efficient system for transporting voters, regardless of political affiliation, to the polls on election day. Furthermore, we understand that envisioned by the consolidation was a change to a more centralized polling location.

In view of these considerations, then, we believe that the county has satisfied its burden of showing that the proposed changes are free of a discriminatory purpose and effect. Therefore, in accordance with the reconsideration guidelines promulgated in the Procedures for the Administration of Section 5 (28 C.F.R. 51.47), the objection interposed to the above-mentioned changes is hereby withdrawn. However, we feel a responsibility to point out that Section 5 of the Voting Rights Act expressly provides that the failure

of the Attorney General to object does not bar any subsequent judicial action to enjoin the enforcement of such changes. See also 28 C.F.R. 51.48. In this connection, we also feel a responsibility to caution you that should the county fail to establish a more centrally located polling place as anticipated by our determination here, we may find it necessary to pursue other appropriate remedies under the Voting Rights Act.

Sincerely,



Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

April 8, 1985

Lester G. Carter, Jr., Esq.
James R. Nance, Jr., Esq.
Nance, Collier, Herndon & Wheless
P. O. Box 2304
Fayetteville, North Carolina 28302

Dear Messrs. Carter and Nance:

This refers to the consolidation of the Cumberland County School District and the Fayetteville City School District; the establishment of an eight-member board of trustees and an appointed interim board; the method of election--two multimember districts with two members and six members, respectively; the election implementation schedule; and the districting plan for the consolidated school district in Cumberland County, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received the information to complete your submission on February 6, 1985.

The Attorney General does not interpose any objections to the changes in question except for the election implementation schedule. However, we feel a responsibility to point out that Section 5 of the Voting Rights Act expressly provides that the failure of the Attorney General to object does not bar any subsequent judicial action to enjoin the enforcement of such changes. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.48).

With respect to the election implementation schedule, however, we cannot reach a similar conclusion. The election schedule before us proposes to delay until 1988 implementation of the newly created form of government to be elected under the districting plan being precleared this day by the Attorney General. The county proposes to accomplish this by appointing an interim board of eight members consisting of the five incumbents (all white) of the existing county board and three of the eight incumbent members (two whites and one black) of the existing city school board to govern the newly consolidated school district until 1988 when elections are to be held for the first time. The county has offered no compelling justification for this seemingly unnecessary delay in the implementa-

tion of its newly created school governance structure and our concerns are prompted by our observations that, contrary to the composition of the proposed permanent school board, the interim board does not appear fairly to reflect minority voting strength in the consolidated school district. Nor have we otherwise been able to discern any nonracial justification for the delay especially when 1985 or 1986 would appear to offer a much more normal opportunity for implementation.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose or effect. See Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.39(e)). In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that the county's burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the election implementation schedule for the consolidated school district.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that none of these changes has either the purpose or will have the effect of denying or abridging the right to vote on account of race or color. In addition, Section 51.44 of the guidelines permits you to request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the effect of the objection by the Attorney General is to make the consolidation resolution legally unenforceable insofar as it seeks to delay until 1988 the elections for the new school board. 28 C.F.R. 51.9.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action Cumberland County plans to take with respect to this matter. If you have any questions, feel free to call Sandra S. Coleman (202-724-6718), Director of the Section 5 Unit of the Voting Section.

Sincerely,

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

APR 29 1985

Robert C. Cogswell, Jr., Esq.
City Attorney
P. O. Box 1513
Fayetteville, North Carolina 28302

Dear Mr. Cogswell:

This refers to the twenty-nine annexations (Ordinance Nos. 84-4-267, 84-4-268, 84-5-269, 84-5-270, 84-7-271, 84-7-272, 84-7-273, 84-7-274, 84-7-275, 84-7-276, 84-7-277, 84-7-278, 84-7-279, 84-7-280, 84-7-281, 84-7-282, 84-7-283, 84-7-284, 84-7-285, 84-7-286, 84-7-287, 84-7-288, 84-7-289, 84-7-290, 85-1-291, 85-2-292, 85-2-293, 85-2-294 and 85-3-295) to the City of Fayetteville in Cumberland County, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received the information to complete your submission on March 18, 1985.

We have considered carefully the information you have provided, data obtained from the 1980 Census, and information provided by other interested parties. At the outset, we note that, even though blacks constitute over 40 percent of the city's population, at no time has more than one black been elected to the city council, which appears to be the result of a general pattern of racially polarized voting occurring in the context of Fayetteville's at-large election system with its majority vote requirement. Our analysis of available data indicates that the proposed annexations will reduce the city's minority population by 2.4 percent, and that the planned development of the areas to be annexed would, over time, most likely result in a substantially larger percentage dilution. In the context of the at-large election system that exists in Fayetteville, we view this prospect as significantly enhancing the ability of the white majority to control the election of all councilmembers.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has no discriminatory purpose or effect. See Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.39(e)). In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that that burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the annexations here under submission.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that these changes have neither the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. In addition, Section 51.44 of the guidelines permits you to request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the effect of the objection by the Attorney General is to make the annexations legally unenforceable insofar as voting rights are concerned. 28 C.F.R. 51.9.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action the City of Fayetteville plans to take with respect to this matter. If you have any questions, feel free to call Sandra S. Coleman (202-724-8388), Director of the Section 5 Unit of the Voting Section.

Sincerely,

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

MAR 3 1986

Robert C. Cogswell, Jr., Esq.
City Attorney
P. O. Box 1513
Fayetteville, North Carolina 28302

Dear Mr. Cogswell:

This refers to Ordinance No. S1985-17 and Resolution No. R1985-109 which provide for an increase in the size of the city council from six to nine; the change in the method of election to six single-member districts with three at-large positions; the districting plan; and the removal of voting powers from the mayor except in the case of a tie for the City of Fayetteville in Cumberland County, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. This also refers to our reconsideration of the April 29, 1985, objection to twenty-nine annexations to the city. We received your initial submission on December 30, 1985; supplemental information was received on January 27, 1986.

The Attorney General does not interpose any objections to the changes contained in Ordinance No. S1985-17 and Resolution No. R1985-109. In addition, because the changes being precleared at this time provide a method of election which affords the minority group "representation reasonably equivalent to their political strength in the enlarged community" (City of Richmond v. United States, 422 U.S. 358, 370 (1975)), the objection interposed on April 29, 1985, to twenty-nine annexations to the city is hereby withdrawn. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.45). However, we feel a responsibility to point

out that Section 5 of the Voting Rights Act expressly provides that the failure of the Attorney General to object does not ba any subsequent judicial action to enjoin the enforcement of such changes. See also 28 C.F.R. 51.48.

Sincerely,

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

cc: Dr. Brian Sherman
Direct Research Services

WBR:SSC:TGL:gmn
DJ 166-012-3
M4919-4920
M7497

March 10, 1986

M. H. Hood Ellis, Esq.
Wilson & Ellis
P. O. 1365
Elizabeth City, North Carolina 27909-1365

Dear Mr. Ellis:

This refers to the change in the method of election to four single-member districts and four at large with residency districts, the method of staggering the positions, the districting plan and the utilization since 1965 of the majority vote requirement in the City of Elizabeth City, Pasquotank County, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received the information to complete your submission on January 9, 1986.

The Attorney General does not interpose any objection to the 1965 adoption and subsequent use of the majority vote requirement. However, we feel a responsibility to point out that Section 5 of the Voting Rights Act expressly provides that the failure of the Attorney General to object does not bar any subsequent judicial action to enjoin the enforcement of such changes. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.48).

With regard to the other changes involved, we note at the outset that in order to obtain preclearance pursuant to Section 5, the city must demonstrate that the submitted voting procedures are nondiscriminatory in both effect and purpose. See Georgia v. United States, 411 U.S. 526 (1973); see also 28 C.F.R. 51.39(e). Our analysis confirms that the submitted voting procedures, when compared to the at-large election structure, will enhance the opportunity for black political participation and thus will not have a discriminatory effect within the meaning of Section 5. Beer v. United States, 425 U.S. 130, 141 (1976). We are unable to conclude, however, that the changes were not accomplished with the proscribed purpose.

As we understand it, the change in the method of election and the districting plan are outgrowths of a consent decree entered into by the parties to NAACP v. City of Elizabeth City, N.C., No. 83-39-CIV-2 (E.D. N.C. 1984). The primary purpose of the consent decree was to resolve the legal challenge, under Section 2 of the Voting Rights Act, to the previously existing at-large election structure. In spite of that agreed resolution, however, the city has proposed, without satisfactory explanation and over the opposition of the plaintiffs in the litigation, to continue to elect one half of the governing body on an at-large basis and in a manner identical to that which the decree was designed to eliminate.

While the retention of some at-large seats is not, by itself, indicative of a prohibited racial purpose, the at-large system chosen here contains the very features that characterized the plan abandoned by the consent decree and was chosen over other readily available alternatives which would have allowed some at-large representation without unnecessarily limiting the potential for blacks to elect representatives of their choice to office. We are aware that representatives of the black community informed city officials of the discriminatory features of the at-large portion of the adopted plan, and that the plan was enacted with knowledge of the disparate impact on black voters that the at-large portion likely would have.

In these circumstances, the city has not shown and I cannot conclude that the submitted voting procedures were adopted without the purpose of denying or abridging the right to vote on account of race. See, e.g., Busbee v. Smith, 549 F. Supp. 494 (D. D.C. 1982), aff'd, 459 U.S. 1166 (1983). Therefore, on behalf of the Attorney General, I must object to the proposed new method for electing the city council of Elizabeth City, North Carolina, insofar as it incorporates the at-large positions to be elected in the manner set forth in your submission.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that none of these changes have neither the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. In addition, Section 51.44 of the guidelines permits you to request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the effect of the objection by the Attorney General is to make legally unenforceable the 4-4 system, insofar as it incorporates the presently proposed residency districts, the staggering method adopted, and the majority vote requirement in the election of at-large members to the council. 28 C.F.R. 51.9.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action the City of Elizabeth City plans to take with respect to this matter. If you have any questions, feel free to call Sandra S. Coleman (202-724-6718), Director of the Section 5 Unit of the Voting Section.

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

MAR 10 1986

Mr. Garry C. Mercer
Wilson County Manager
P. O. Box 1728
Wilson, North Carolina 27893

Dear Mr. Mercer:

This refers to the election of county commissioners from two multimember districts for concurrent, four-year terms, the implementation schedule, the districting plan, and the procedures for conducting the May 6, 1986, referendum election for the board of county commissioners in Wilson County, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received the information to complete your submission on January 7, 1986.

We have considered carefully the information you have provided, as well as comments and information from other sources. At the outset, we note that the submitted voting changes were enacted following the federal court ruling that the existing at-large election structure denies black citizens an opportunity equal to that afforded white citizens to participate in the political process and to elect candidates of their choice in violation of Section 2 of the Voting Rights Act, as amended, 42 U.S.C. 1973. Haskins v. County of Wilson, No. 82-19-CIV-8 (E.D.N.C. Aug. 16, 1985). In order to obtain preclearance pursuant to Section 5, the county must demonstrate that the submitted voting changes "[do] not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color." 42 U.S.C. 1973c. See also, Georgia v. United States, 411 U.S. 526 (1973); Procedures for the Administration of Section 5 (28 C.F.R. 51.39(e)).

The submitted voting procedures, when compared to the at-large election structure, will enhance the opportunity for effective black political participation and thus will not have a discriminatory effect within the meaning of Section 5. Beer v. United States, 425 U.S. 130, 141 (1976). We cannot conclude, however, that the proposed method of election was adopted without a discriminatory purpose.

The submitted plan creates two multimember districts. One district would elect five members and is about 76 percent white in population; the other district would elect two members and is about 67 percent black in population. The proposed five-member district is geographically large and essentially retains features of the at-large election system which the Court has found violative of Section 2 of the Voting Rights Act. In particular, in light of the Haskins court finding that there is "a substantial degree of racial polarization in Wilson County elections," Order, at 7, black voters likely will have little, if any, chance of electing a representative of their choice in the five-member district. This is significant because nearly half of the county's black population has been placed in this district, while a relatively insignificant portion of the county's white population has been placed in the majority black district. While nothing said herein should be construed as precluding the use of multimember districts, the material submitted concerning the county commissioners' deliberations shows that they were well aware of these limiting aspects of the submitted plan and supports an inference that the plan was designed and intended to limit the number of commissioners black voters would be able to elect.

In light of these considerations, I cannot conclude, as I must under the Voting Rights Act, that the county has sustained its burden of showing that the submitted changes were not motivated, at least in part, by a discriminatory purpose. Therefore, on behalf of the Attorney General, I must object to the submitted election method, districting plan and implementation schedule.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that these changes have neither the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. In addition, Section 51.44 of the guidelines permits you to request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the effect of the objection by the Attorney General is to make the submitted election method, districting plan and implementation schedule legally unenforceable. 28 C.F.R. 51.9.

We note that your submission also contains a proposed referendum election on the submitted election plan. In light of our determination with regard to that plan, the Attorney General will make no determination with regard to the referendum election. 28 C.F.R. 51.20(b).

In addition, it has come to our attention that the county has proposed, in the context of the Haskins case, to hold the upcoming primary and general elections for county commissioner on dates other than the regularly scheduled dates for these elections. This proposal is subject to Section 5 review before the changes may be legally enforced. McDaniel v. Sanchez, 452 U.S. 130 (1981).

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action Wilson County plans to take with respect to this matter. If you have any questions, feel free to call Steven H. Rosenbaum (202-724-8388), Attorney/Reviewer of the Section 5 Unit of the Voting Section.

In view of the pending vote dilution litigation, we are forwarding a copy of this letter to the Honorable F.T. Dupree, Jr. and counsel of record in the Haskins case.

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

Mr. Alex K. Brock
Executive Secretary-Director
Suite 801 Raleigh Building
5 West Hargett Street
Raleigh, North Carolina 27601

APR 11 1986

Dear Mr. Brock:

This refers to the following changes affecting voting for the State of North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c: Chapter 262, H.B. No. 367 (1965), which established a numbered post requirement for the election of superior court judges; Chapter 997, S.B. No. 557 (1967), which provided for additional superior court judgeships for Judicial Districts 12, 18, 19, 26, and 28, and specified the date on which the initial full terms of office commenced; Chapter 1119, S.B. No. 125 (1977), which provided for additional superior court judgeships for Judicial Districts 3, 4, 8, 10, 12, 14, 19, 20, 22, and 26, and specified the date on which the initial full terms of office commenced; Chapter 1130, S.B. No. 224 (1977), which divided Judicial District 15 for the purpose of electing superior court judges, allocated the pre-existing superior court judgeship to District 15A, provided for an additional superior court judgeship for District 15B, divided Judicial District 27 for the purpose of electing superior court and district court judges, allocated preexisting superior court and district court judgeships between the divided districts, provided for an additional district court judgeship for District 27B, and specified the date on which the new judge's initial full term of office commenced; the administrative decision which specified the date on which the initial full term of office commenced for the judgeship added to District 15B by Chapter 1130 (1977); Chapter 1238, S.B. No. 996 (1978), which divided Judicial District 19 for the purpose of electing superior court judges, and allocated preexisting superior court judgeships

between new Districts 19A and 19B; Chapter 1109, H.B. No. 1551 (1984), which provided for additional superior court judgeships for Districts 1, 9, 18, and 30, provided additional district court judgeships for Districts 2 and 12, and specified the date on which the new judges' initial full terms of office will commence; and Chapter 654, S.B. No. 329 (1965), which provided for additional superior court judgeships for Districts 10, 21, and 27, and specified the date on which the initial full terms of office commenced. Your submission of Chapters 262, 997, 1119, 1238, and 654 was completed on February 10, 1986. Chapters 1130 and 1109 were submitted on February 18, 1986.

We have considered carefully the information you have provided, as well as comments and information from other interested parties. With the exception of the numbered post requirement instituted by Chapter 262 (1965) and the staggered terms of the superior court judgeships created by Chapter 997 (1967) and Chapter 1119 (1977) in Districts 3, 4, 8, 12, 18, and 20, the Attorney General does not interpose any objection to the changes in question. However, we feel a responsibility to point out that Section 5 of the Voting Rights Act expressly provides that the failure of the Attorney General to object does not bar any subsequent judicial action to enjoin the enforcement of such changes. In addition, as authorized by Section 5, the Attorney General reserves the right to reexamine the submission of Chapter 1130 (1977) and Chapter 1109 (1984) if additional information that would otherwise require an objection comes to his attention during the remainder of the sixty-day review period. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.42 and 51.48).

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. See Georgia v. United States, 411 U.S. 526 (1973); see also 28 C.F.R. 51.39(e). In measuring discriminatory effect, we must examine the changes in the context of the currently existing conditions. City of Rome v. United States, 446 U.S. 156, 186 (1980).

The use of numbered posts, in combination with staggered terms for superior court judgeships in some districts, precludes minority voters from effective use of the election technique of single-shot voting, a technique that was available prior to the 1965 change. The elimination of the opportunity to single-shot vote plainly has a retrogressive effect in some districts on the ability of the minority community to participate meaningfully in the election of superior court

judges. See, e.g., City of Rome v. United States, supra, 446 U.S. at 183-85. Our analysis indicates that the covered districts with minority voting age population of sufficient size to make single-shot voting effective are Districts 9, 12, and 18, as well as potentially Districts 1, 3, 4, 8, and 20.

In these circumstances, I am unable to conclude, as I must under the Voting Rights Act, that the state has sustained its burden in this instance of demonstrating the absence of discriminatory effect. See Beer v. United States, 425 U.S. 130, 141 (1976). Therefore, on behalf of the Attorney General, I must object to Chapter 262 (1965) and the staggered terms of the superior court judgeships created by Chapter 997 (1967) and Chapter 1119 (1977) in Districts 3, 4, 8, 12, 18, and 20 (the information provided by the state indicates that the terms of the judges in Districts 1 and 9 already are concurrent).

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that these changes have neither the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. In addition, Section 51.44 of the guidelines permits you to request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the effect of the objection by the Attorney General is to make the objected-to changes legally unenforceable. 28 C.F.R. 51.9.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action the State of North Carolina plans to take with respect to this matter. If you have any questions, feel free to call Mark A. Posner (202-724-6302), Attorney/Reviewer of the Section 5 Unit of the Voting Section.

Sincerely,

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

MAY 5 1986

William C. Brewer, Jr.
Speight, Watson and Brewer
P. O. Drawer 99
Greenville, North Carolina 27835-0099

Dear Mr. Brewer:

This refers to the following acts concerning various board of education matters in Pitt County, North Carolina:

(1) Chapter 2, H.B. No. 29 (1985), which provides for the consolidation of the Pitt County School District and the Greenville City School District, the appointment of a twelve-member interim board, the election of a twelve-member permanent board, and the method of election (eight residency districts and one multimember residency district electing four members by a plurality vote to staggered, six-year terms of office);

(2) Chapter 495, H.B. No. 1397 (1985), which provides for the increase from twelve to fifteen appointed members to the interim consolidated board;

(3) Chapter 89, S.B. No. 113 (1965), which increased the Pitt County Board of Education from five to nine members and changed the method of nominating board members for appointment by the legislature;

(4) Chapter 656, S.B. No. 339 (1965), which extended the terms of office for the Pitt County board members;

(5) Chapter 360, H.B. No. 769 (1971), which changed the appointed Pitt County board to a nine-member board elected at large on a nonpartisan basis from residency districts with a plurality vote requirement to six-year, staggered terms, and specified the election schedule; and

(6) Chapter 856, H.B. No. 1498 (1979), which deleted the Greenville residency district from the Pitt County School District, thereby decreasing from nine to eight the number of board members.

These acts were submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c, and we received the information to complete your submission on March 6, 1986.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has no discriminatory purpose or effect. See Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.39(e)). Our analysis of the submitted voting changes has been complicated by the fact that, prior to this submission, the Pitt County Board of Education had failed to submit for Section 5 review any of the changes affecting the method of electing board members effectuated since the enactment of the Voting Rights Act of 1965. In this regard, we note that, as of November 1, 1964, the operative date of the Voting Rights Act, county board members were appointed by the legislature following a primary election held for the purpose of determining candidates to be submitted to the legislature for its consideration. Candidate residency districts were added to the primary election structure in 1965 at the same time that the board was increased in size.

The origins of the at-large structure presently used to elect the county board remain confused. We are aware that certain state-wide legislation (Chapters 972 (1967) and 1301 (1969)) mandated at-large elections for the Pitt County Board of Education but we have been advised that such legislation was not implemented fully in Pitt County. It is clear, however, that at-large elections were required by Chapter 360, H.B. 769 (1971), and that that legislation constitutes a part of your current submission.

Our analysis reveals that patterns of racial bloc voting prevailing in Pitt County make it virtually impossible for black voters in the county to participate meaningfully in the school board elections under the unprecleared at-large

structure that has been used since 1971. The county school board has failed to provide a satisfactory nonracial explanation for establishing the election system currently being implemented. Under these circumstances, I cannot conclude that the county has sustained its burden of demonstrating that the existing at-large system is free of discriminatory purpose and effect. Accordingly, I must, on behalf of the Attorney General, interpose a Section 5 objection to the at-large voting procedures being used for the election of members to the existing county school board.

Our review of the proposed merger legislation (Chapter 2, H.B. No. 29 (1985), and Chapter 495, H.B. No. 1397 (1985)) proceeds from our analysis of the present method of electing the county board, which method is incorporated to a significant extent in the merger legislation. In this connection, we note that as opposed to the existing county board, the existing city school board is elected pursuant to voting procedures that have satisfied the preclearance requirements of Section 5 and have afforded black citizens an opportunity for effective political participation. The proposed merger plan provides that eight positions on the board for the merged school districts will be filled from the current eight county residency districts and that the Greenville Township area will constitute a four-member residency district; all positions will be elected on an at-large basis.

The submission reveals a recognition by the county that the merger legislation will not afford black citizens an equal opportunity for effective political participation. It was recognized that black citizens had been unable to elect candidates of their choice to the county board, and that the four-member city residency district would reduce the opportunity for effective single-shot voting, a device that has been utilized by blacks in the city school board district to their benefit in past elections. In an apparent effort to cure the disparate racial impact of the election method in the merger legislation, the supplemental provisions of Chapter 495 were enacted allowing for the appointment of three identified black citizens to serve on the merged district board until 1992 at which time a new, and at this time undefined, election plan is promised to be implemented.

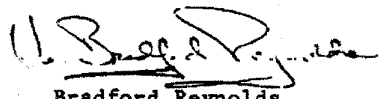
The totality of facts here indicate that the merger legislation will result in a retrogression from the present position of city voters to elect candidates of their choice to the board. The submission reveals also that the method of election chosen was recognized by the county to have a discriminatory impact on black voters. The Voting Rights Act does not envision that the discriminatory impact of election procedures will be overcome by racially based appointments. Under these circumstances, then, I cannot conclude, as I must under the Act, that the county's burden imposed by Section 5 has been satisfied with regard to the method of electing the merged board. Accordingly, on behalf of the Attorney General, I must object to the voting changes to be occasioned by the merger legislation.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the voting changes subject to the objection have neither the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. In addition, Section 51.44 of the guidelines permits you to request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the effect of the objection by the Attorney General is to make the method of election for the merged board and the existing at-large election system for the county board legally unenforceable. 28 C.F.R. 51.9.

In light of the objection interposed herein, we believe it appropriate to make no determination at this time as to the voting changes occasioned by Chapters 89 and 656 (1965) particularly since those procedures are not being implemented and have not been proposed for re-implementation. Also, in light of the objection to the County board's current at-large election structure, we will make no determination concerning the voting changes occasioned by Chapter 856 (1979).

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action Pitt County plans to take with respect to this matter. If you have any questions, feel free to call Stuart M. Rosenbaum (202-724-8388), Acting Director of the Section Unit of the Voting Section.

Sincerely,



Bradford Reynolds
Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

May 12, 1986

Marshall F. Dotson, Jr., Esq.
Onslow County School Board Attorney
320 New Bridge Street
Drawer 766
Jacksonville, North Carolina 28541-0766

Dear Mr. Dotson:

This refers to the following statutes concerning the method of electing the Onslow County Board of Education in North Carolina:

1. Chapter 436 (1965), which increased the terms from two to four years and provided for staggered terms;

2. Chapter 630 (1967), which increased the school board from five to seven members, with nomination and election on an at-large basis, five members nominated and elected from residency districts (which followed township lines) and two members nominated and elected simultaneously and without regard to residence;

3. Chapter 2 (1969), which eliminated the residency district requirement and imposed a majority vote requirement in primary elections;

4. Chapter 525 (1977), which reimposed the requirement that five of the seven board members be nominated and elected from residency districts (which followed township lines) and the plurality vote requirement; and

5. Chapter 287 (1985), which provided for the staggering of the two seats with no residency requirement.

The voting changes occasioned by these statutes were submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received the information to complete your submission on March 11, 1986.

We have considered carefully the information you have provided, data obtained from the census, as well as comments and information from other interested parties. At the outset, we note that, prior to this submission, the Onslow County Board of Education had failed to submit for Section 5 review any of the changes affecting the method of electing board members effectuated since the enactment of the Voting Rights Act of 1965. You have advised us that, as of November 1, 1964, the operative date of Section 5, there were five school board members who were nominated and elected at large on the basis of residency districts (which followed township lines) for concurrent, two-year terms. Elections were held on a partisan basis with a plurality vote requirement.

With regard to the voting changes occasioned by Chapter 436 (1965), Chapter 630 (1967) and Chapter 2 (1969), the Attorney General does not interpose any objection. Section 5 of the Voting Rights Act expressly provides, however, that the failure of the Attorney General to object does not bar any subsequent judicial action to enjoin the enforcement of such changes. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.48).

With regard to Chapter 525 (1977), we note that under the election system set forth in Chapter 2 (1969), precleared herein, the school board was comprised of seven members elected at large on a partisan basis for staggered, four-year terms, with a majority vote requirement in the primary election. The major change adopted in Chapter 525 (1977) is the re-imposition of the residency district requirement for five of the seven at-large seats.

Our analysis reveals that black candidates for county-wide office repeatedly have been unsuccessful due at least in part to what appears to be a prevailing pattern of racially polarized voting. The only successful black candidacy occurred in 1976 under the now precleared Chapter 2 system, when the residency district requirement was not in effect. It was, however, shortly thereafter that the residency district requirement was re-imposed by Chapter 525 even though at that time

there was substantial geographic diversity among the school board members. In addition, it appears that the change was adopted without any significant publicity or consultation with the black community.

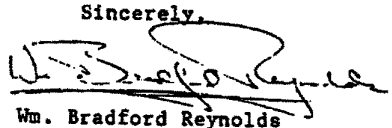
The school district's residency district requirement in the context of the prevailing racial voting patterns reduces the utility of single-shot voting by black voters and thus diminishes the potential for blacks being able to elect candidates of their choice to the school board. In both 1980 and 1984, the black candidate received enough votes to have been nominated but for the residency district requirement, which allowed candidates with lower vote totals to be nominated. Under these circumstances, then, I cannot conclude that the board of education has sustained its burden of demonstrating that the residency district requirement has neither a discriminatory purpose nor a discriminatory effect. See Georgia v. United States, 411 U.S. 526 (1973). Accordingly, I must, on behalf of the Attorney General, interpose an objection to the residency district requirement of Chapter 525 (1977).

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that this change has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. In addition, Section 51.44 of the guidelines permits you to request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the effect of the objection by the Attorney General is to make the method of election for the county board described in Chapter 525 (1977) legally unenforceable. 28 C.F.R. 51.9.

Finally, we note that the voting changes occasioned by Chapter 287 (1985) seek further to modify the election system established by Chapter 525 (1977). In light of the objection to the electoral method set forth in Chapter 525 (1977), we will make no determination concerning the voting changes enacted by Chapter 287 (1985).

To enable this Department to meet its responsibility to nforce the Voting Rights Act, please inform us of the course f action the Onslow County Board of Education plans to take ith respect to this matter. If you have any questions, feel ree to call Steven H. Rosenbaum (202-724-8388), Acting Director f Section 5 Unit of the Voting Section.

Sincerely,



Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

MAY 23 1986

Mr. Alex K. Brock
Executive Secretary-Director
State Board of Elections
Suite 801 Raleigh Building
5 West Hargett Street
Raleigh, North Carolina 27601

Dear Mr. Brock:

This refers to temporary regulations N.C.A.C. 07 .0003 through .0006 adopted by the North Carolina State Board of Elections and submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. Regulation .0003 provides an election schedule for holding special primary elections for superior court positions in Districts 1, 9, 10, 15A, 15B, 18, 26, 27B, and 30; regulation .0004 specifies that a numbered post requirement will not be used in filing for candidacy for the office of superior court judge; regulation .0005 designates the method for calculating whether a judicial candidate has received a majority of the vote in the first primary; and regulation .0006 provides that superior court judges shall be nominated in elections in their respective districts and elected in statewide elections. We received your submission on April 30, 1986. In accordance with your request, expedited consideration has been given this submission pursuant to the Procedures for the Administration of Section 5 (28 C.F.R. 51.32).

We have considered carefully the information you have provided, as well as comments received from other interested parties. At the outset, we note that regulations .0005 and .0006 restate current North Carolina law and, thus, do not reflect voting changes that are subject to the Section 5 preclearance requirements. Accordingly, the Attorney General will make no determination with regard to these regulations. 28 C.F.R. 51.4(b).

With respect to regulation .0004, the Attorney General does not interpose any objection to the change in question. However, we feel a responsibility to point out that Section 5 of the Voting Rights Act expressly provides that the failure of the Attorney General to object does not bar any subsequent judicial action to enjoin the enforcement of such change. In addition, as authorized by Section 5, the Attorney General reserves the right to reexamine this submission if additional information that would otherwise require an objection comes to his attention during the remainder of the sixty-day review period. See also 28 C.F.R. 51.42 and 51.48.

Likewise, with regard to regulation .0003, the Attorney General interposes no objection insofar as it provides for elections in Districts 1, 9, 10, 15A, 15B, 26, 27B and 30. We cannot reach the same conclusion, however, to the extent that regulation .0003 provides for special primary elections in District 18.

The state previously decided that it would be appropriate to defer holding primary elections for these positions because of the pending submission before the Attorney General of voting changes related to the election of superior court judges. As you are aware, on April 11, 1986, the Attorney General interposed a Section 5 objection to the staggering of terms in District 18 occasioned by the setting of the date for the commencement of the initial term of office of the judgeship in that district created by Chapter 997 (1967). The state's decision now to resume the election schedule in District 18, without acting to make the terms of all positions in District 18 concurrent, is inconsistent with the April 11, 1986, objection and, in our view, seeks to implement further the system of staggering addressed in the objection.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. See Georgia v. United States, 411 U.S. 526 (1973); see also 28 C.F.R. 51.39(e). In these circumstances, I am unable to conclude, as I must under the Voting Rights Act, that the state has sustained its burden with respect to its proposal to hold special elections for only three of the four positions in District 18. Therefore, on behalf of the Attorney General, I must object to regulation .0003 insofar as it provides for special primary elections for superior court positions in District 18.

Otherwise, our information indicates that the election schedule contained in regulation .0003 satisfies the requirements of Section 5. However, should the state decide that the remainder of this regulation is not severable, and thus that a new regulation must be adopted to provide a schedule for the other districts covered by regulation .0003, we will provide expedited consideration should the state make a new Section 5 submission in that regard to the Attorney General.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the holding of special primary elections for three of the superior court judgeships in District 18 has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. In addition, Section 51.44 of the guidelines permits you to request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the effect of the objection by the Attorney General is to make the proposed holding of an election in District 18 legally unenforceable. 28 C.F.R. 51.9.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action the State of North Carolina plans to take with respect to this matter. If you have any questions, feel free to call Mark A. Posner (202-724-8388), Attorney/Reviewer of the Section 5 Unit of the Voting Section.

Sincerely,

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

WBR:LLT:RAK:gmh:dvs
DJ 166-012-3
M5640-5642
R2382-2383

October 27, 1986

Daniel A. Manning, Esq.
Attorney, Martin County
Board of Education
P. O. Box 892
Williamston, North Carolina 27892

Dear Mr. Manning:

This refers to the several statutes, as enumerated below, concerning the method of electing the Martin County, North Carolina, board of education, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received the information to complete your submission on August 27, 1986.

Chapter 972 (1967), as amended by Chapter 1301 (1969), removed the power to appoint school board members from the state legislature and provided for the nonpartisan, direct election of the school board in an at-large system with plurality voting and no residency districts. Chapter 380 (1971) increased the size of the school board from five to six members and created five residency districts, including one two-member district. House Bill No. 64 (1975) added a seventh nonresidency seat to the school board.

We have considered carefully the information you have provided, data obtained from the Census, school enrollment figures provided by the superintendent's office, as well as comments and information from other interested parties. At the outset, we note that prior to this submission, the Martin County Board of Education had failed to submit for Section 5 review any of the changes affecting the method of electing board members since the Voting Rights Act became effective. In view of that circumstance, we further note that, according to information you have provided, as of November 1, 1964, the

operative date of Section 5, the Martin County school board consisted of five members nominated in at-large, partisan primary elections for staggered terms without residency districts, but appointed by acts of the North Carolina General Assembly to staggered, four-year terms.

With regard to the implementation in Martin County of the voting changes occasioned by Chapter 972 (1967), as amended by Chapter 1301 (1969), the Attorney General does not interpose any objection. However, we feel a responsibility to point out that Section 5 of the Voting Rights Act expressly provides that the failure of the Attorney General to object does not bar any subsequent judicial action to enjoin the enforcement of such changes. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.48).

With regard to Chapter 380 (1971), we note that under the method of election provided for by Chapter 972 (1967), as amended by Chapter 1301 (1969), and precleared herein under Section 5, the school board consisted of five members elected at large on a nonpartisan basis to four-year, staggered terms without residency districts. Under that system, black voters had the opportunity to single-shot, or "bullet," vote for the candidate(s) of their choice from among the entire field of candidates that appeared on the ballot at each election. Chapter 380 added a sixth seat to the school board and, in addition, provided for five residency districts, including one two-member district.

Our analysis has shown what appears to be a prevailing pattern of racially polarized voting in county-wide elections involving black candidates in Martin County. Black candidates seem generally to be the choice of black voters, but only one black candidate has ever won election to the board, despite a significant number of black candidacies, including a black incumbent who had been appointed to the board in 1975 but thereafter was unable in both 1978 and 1982 to win election to the school board. Our analysis further reveals that the black community apparently was not consulted about the adoption of residency districts until after that change effectively had become an accomplished fact.

While we find no basis for objecting to the addition of the sixth seat to the board, the school board's imposition of residency districts has had an unmistakable retrogressive effect on the ability of minority voters to elect candidates of their choice, particularly in light of the high degree of racial bloc voting that seems to exist in a county with a 40.6 percent black voting age population. Indeed, we note that on at least one occasion a black candidate received sufficient votes to be elected to the board, but for the use of residency districts. Under these circumstances, I cannot conclude that the Martin County Board of Education has sustained its burden of demonstrating that the residency district requirement is free from a prohibited discriminatory effect under Section 5. See Georgia v. United States, 411 U.S. 526 (1973). Accordingly, I must, on behalf of the Attorney General, interpose an objection to the residency district requirement of Chapter 380 (1971).

Notwithstanding the objection to the use of residency districts under Chapter 380 (1971), the Attorney General interposes no objection to the addition of the seventh seat added to the school board by House Bill No. 64 (1975). Of course, in the context of the method of election precleared herein--which under Chapter 972 (1967), as amended by Chapter 1301 (1969), provides for a school board to be elected at large to staggered, four-year terms with neither residency districts nor designated posts--the board member for the precleared seventh seat must be elected in the same manner as the other six board members. As noted previously, the failure of the Attorney General to object does not bar any subsequent judicial action to enjoin the enforcement of these changes.

As provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that none of these changes has either the purpose or will have the effect of denying or abridging the right to vote on account of race or color. In addition, Section 51.44 of the guidelines permits you to request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the effect of the objection by the Attorney General is to make the use of residency districts as prescribed in Chapter 380 (1971) legally unenforceable. See also 28 C.F.R. 51.9.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action the Martin County Board of Education plans to take with respect to these matters. If you have any questions, feel free to call Lora L. Tredway (202-724-8388), Attorney/Reviewer in the Section 5 Unit of the Voting Section.

Sincerely,

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

WBR:SSC:KIF:dvs:sw
DJ 166-012-3
N4467
P0661
P5321

November 4, 1986

E. B. Borden Parker, Esq.
County Attorney
P. O. Box 244
Goldsboro, North Carolina 27533-0244

Dear Mr. Parker:

This refers to Chapter 476, S.B. No. 303 (1965), which provides for the election of the county board of commissioners to staggered terms; the implementation schedule for staggering the terms; and an increase in the length of terms for county commissioners for the County Board of Commissioners in Wayne County, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received the information to complete your submission on September 5, 1986.

We have considered carefully the information you have provided as well as information received from other interested parties. With regard to the lengthening of the commissioners terms, the Attorney General does not interpose any objection. However, we feel a responsibility to point out that Section 5 of the Voting Rights Act expressly provides that the failure of the Attorney General to object does not bar any subsequent judicial action to enjoin the enforcement of such change. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.48).

With regard to the staggered terms, we are unable to reach the same conclusion on the present state of the record before us. According to our analysis of county election returns, there is some indication of a racially polarized voting pattern in Wayne County and we have not yet received evidence from the County to demonstrate otherwise. In the absence of such rebuttal evidence, it is unquestionably the case that -- in the context of the county's at-large election system and a plurality-win rule in the general elections -- the ability of black voters to single-shot vote provides their only meaningful opportunity to elect candidates of their choice to office. As a general matter, the effectiveness of single-shot voting is

cc: Public File

lessened to the extent that fewer positions are up for election at any particular time. This appears to be the case in Wayne County, where black candidates on occasion have placed 4th and 5th in some elections even though only three seats were being filled. Therefore, changing the number of positions to be elected in any election year from five to two and three, respectively, could well have a retrogressive effect on the ability of minority voters to participate meaningfully in the electoral process and to elect a candidate of their choice.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has no discriminatory purpose or effect. See Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.39(e)). In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that that burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to Chapter 476, S. B. No. 303 (1965) to the extent that it provides for staggered terms.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that this change has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. In addition, Section 51.44 of the guidelines permits you to request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the effect of the objection by the Attorney General is to make the staggered terms legally unenforceable. 28 C.F.R. 51.9.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action Wayne County plans to take with respect to this matter. If you have any questions, feel free to call Sandra S. Coleman (202-724-6718), Director of the Section 5 Unit of the Voting Section.

Sincerely,

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

Civil Rights Division

Office of the Assistant Attorney General Washington, D.C. 20530

Michael Crowell, Esq.
Tharrington, Smith & Hargrove
P. O. Box 1151
Raleigh, North Carolina 27602

JUL 6 1987

Dear Mr. Crowell:

This refers to the 1966 change from single-member districts to an at-large method of nominating candidates, and Chapter 151, H.B. No. 311 (1969) and Chapter 167, S.B. No. 209 (1969), which provide for staggered, four-year terms for the board of commissioners in Onslow County, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your submission on May 5, 1987.

We have considered carefully the information you have provided as well as information received from other interested parties. With regard to the change in the nomination process from district to at-large elections, the Attorney General does not interpose any objection. However, we feel a responsibility to point out that Section 5 of the Voting Rights Act expressly provides that the failure of the Attorney General to object does not bar any subsequent judicial action to enjoin the enforcement of such change. See Section 51.41 of the Procedures for the Administration of Section 5 (52 Fed. Reg. 496 (1987)).

With regard to Chapters 151 and 167, we note at the outset that under the election system adopted by the county in 1966, and precleared above, the county commission is comprised of five members nominated and elected at large on a partisan basis for concurrent, two-year terms, with a majority vote requirement in the primary election. Since that system now has met the Section 5 preclearance requirement, it is against those procedures that we must measure the effect of the change to staggered, four-year terms as set forth in Chapters 151 and 167. See also Section 51.54(b) (52 Fed. Reg. 498 (1987)).

Viewed in that context, our analysis reveals that black candidates for county-wide office repeatedly have been unsuccessful due at least in part to an apparent pattern of racially polarized voting in county elections. Despite this voting pattern, however, and apparently through the election device of single-shot voting,

the electoral history of Onslow County shows that black candidates frequently finish fourth or fifth in multi-candidate, multi-position contests. The one instance where a black candidate finished higher than fourth was a special runoff primary and general election (for the board of education) in which voter turnout was unusually low and, even in that contest, we note that the black candidate finished fifth in the first primary and qualified for the runoff only because five positions were to be elected to the school board. Thus, by restricting the number of commissioner positions to be filled at each election to two or three instead of five, it appears that the adoption of staggered terms reduces the utility of single-shot voting and thus diminishes the opportunity of black citizens to elect candidates of their choice to the board of commissioners.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has no discriminatory purpose or effect. See Georgia v. United States, 411 U.S. 526 (1973); see also Section 51.52(a) (52 Fed. Reg. 497-498 (1987)). In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that that burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to Chapters 151 and 167 (1967) to the extent that they provide for staggered terms.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that this change has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. In addition, Section 51.45 of the guidelines (52 Fed. Reg. 496 (1987)) permits you to request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the effect of the objection by the Attorney General is to make the use of staggered terms legally unenforceable. See Section 51.10 (52 Fed. Reg. 492 (1987)).

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action Onslow County plans to take with respect to this matter. If you have any questions, feel free to call Mark A. Posner (202-724-8388), Deputy Director of the Section 5 Unit of the Voting Section.

Sincerely,

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

OCT 26 1987

Lee E. Knott, Esq.
P. O. Box 548
Washington, North Carolina 27889-0548

Dear Mr. Knott:

This refers to the implementation of Chapter 972 (1967), as amended by Chapter 1301 (1969), and the school board's March 5, 1970, resolution which provide for at-large elections for the county board of education on a nonpartisan basis with a plurality vote requirement, reduce the board from six to five members, and eliminate residency districts; Chapter 210 (1971) which reimposes residency districts; and Chapter 855 (1975) which disqualifies residents of the Washington City School Administrative Unit from voting in elections for the board of education in Beaufort County, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received the information to complete your submission on August 27, 1987.

We have considered carefully the information you have provided, as well as comments and information received from other interested parties. The Attorney General does not interpose any objections to the changes occasioned by Chapters 972, 1301, and 855, and the school board's March 5, 1970, resolution. However, we feel a responsibility to point out that Section 5 of the Voting Rights Act expressly provides that the failure of the Attorney General to object does not bar any subsequent judicial action to enjoin the enforcement of such changes. See Section 51.41 of the Procedures for the Administration of Section 5 (52 Fed. Reg. 496 (1987)).

With regard to Chapter 210 (1971), we note that under the method of election for which Section 5 preclearance has been granted herein, the school board consists of five members elected at large on a nonpartisan basis to four-year, staggered terms without residency districts. That system, by affording black voters the opportunity to utilize the election technique of single-shot voting, would appear to provide them some opportunity to participate in the electoral process and to elect candidates of their choice to office. However, Chapter 210, by imposing a

residency district requirement in school board elections, eliminates that opportunity by effectively precluding the use of single-shot voting.

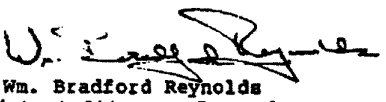
Our analysis of precinct returns for elections involving black candidates for the school board and the county board of commissioners shows what appears to be a pattern of racially polarized voting in Beaufort County. Black candidates generally seem to be the choice of black voters but receive minimal support from white voters. They consistently have lost to white candidates because white voters are the clear majority of the at-large electorate. Thus, no black has been elected to either body in modern times, and these voting patterns apparently have engendered such frustration in the black community that no black has run for either board since 1980. On the other hand, in the City of Washington, where single-shot voting is permitted, it appears that blacks have achieved at least some limited success in elections for the city council and the city school board.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. See Georgia v. United States, 411 U.S. 526 (1973); see also Section 51.52 of the Procedures for the Administration of Section 5 (52 Fed. Reg. 497-498 (1987)). In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that that burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the imposition of residency districts in school board elections.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that this change has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. In addition, Section 51.45 of the guidelines (52 Fed. Reg. 496 (1987)) permits you to request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the effect of the objection by the Attorney General is to make the use of residency districts occasioned by Chapter 210 (1971) legally unenforceable. Section 51.10 (52 Fed. Reg. 492 (1987)).

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action the Beaufort County Board of Education plans to take with respect to this matter. If you have any questions, feel free to call Mark A. Posner (202-724-6388), Deputy Director of the Section 5 Unit of the Voting Section.

Sincerely,



Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

NOV 2 1987

W. Leslie Johnson, Jr., Esq.
Johnson & Johnson
302 West Broad Street
Elizabethtown, North Carolina 28337

Dear Mr. Johnson:

This refers to Chapter 646 (1987) which authorizes the board of commissioners to change the method of electing the board for the 1988 and 1990 elections; and the August 20, 1987, resolution which provides for a change in the method of electing the board from at large to three double-member districts and one at-large, the districting plan, implementation schedule, and an increase in the size of the board from five to seven members in Bladen County, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your initial submission on September 1, 1987; supplemental information was received on October 30, 1987.

We have considered carefully the information you have provided, as well as comments and information from other interested parties. With respect to the change occasioned by Chapter 646, the Attorney General does not interpose any objection. However, we feel a responsibility to point out that Section 5 of the Voting Rights Act expressly provides that the failure of the Attorney General to object does not bar any subsequent judicial action to enjoin the enforcement of such change. In addition, as authorized by Section 5, the Attorney General reserves the right to reexamine this submission if additional information that would otherwise require an objection comes to his attention during the remainder of the sixty-day review period. See Section 51.41 of the Procedures for the Administration of Section 5 (52 Fed. Reg. 496 (1987)).

With regard to the proposed method of election, however, we cannot reach a similar conclusion. The board of commissioners presently is selected in at-large elections, under which only one black has been elected in modern times, despite numerous black candidacies. Our analysis of precinct returns for elections involving black candidates for the board of commissioners, as well as the county school board, indicates a pattern of racially

polarized voting in county elections. In this regard, we note that on October 21, 1987, we filed suit against the board of education under Section 2 of the Act, 42 U.S.C. 1973, alleging that the at-large system does not allow black citizens an equal opportunity to elect candidates of their choice to office.

In order to obtain preclearance pursuant to Section 5, the county must demonstrate that the submitted voting changes are non-discriminatory in both purpose and effect. See Georgia v. United States, 411 U.S. 526 (1973); see also Section 51.52 (52 Fed. Reg. 497-498 (1987)). Our analysis confirms that the proposed method of election would enhance the opportunity for black political participation and thus will not have a retrogressive effect within the meaning of Section 5. Beer v. United States, 425 U.S. 130, 141 (1976).

We are unable to conclude, however, that the county has satisfied its burden that the proposed election system is free from discriminatory purpose. We recognize that the change is the result of a substantial effort by the black community to obtain the adoption of a method of election that will allow black citizens a fair opportunity for effective political participation. The initial response of the board appears to have been to reject any discussion or investigation into this issue. However, in mid-1986 the board appointed a districting study committee, composed of leading white and black citizens in the county, to investigate and make an appropriate recommendation. The committee met over a five-month period, and after hearing from experts in the field of voting and discussing alternative election systems, recommended a compromise system of five single-member districts (two of which would be majority black) and one at-large. The black community indicated that it would support such a plan, despite its preference for a five-district method with no at-large seats.

While it became clear that some change in the election method would be mandated, it appears that the responsible public officials desired to adopt a plan which would maintain white political control to the maximum extent possible and thereby minimize the opportunity for effective political participation by black citizens. Thus, the board rejected the recommendation of its redistricting committee and representatives of the black community, and instead adopted a plan under which blacks would appear to be limited to an opportunity to elect two of the seven members on the board. The board's membership would be increased by two though we have been advised of no reason for expanding the size of the board independent of the change in method of election. In addition, after the black community opposed the local bill which would have adopted the proposed election system and the bill was dropped from consideration, the change was then adopted pursuant to a transfer of authority which constitutes a significant deviation from the normal procedure followed in North Carolina for adopting election method changes. Of course, neither the increase in the size of a governing body nor the empowering of a local board to adopt a new election plan is per se unlawful but, in the circumstances present here, it appears that the board undertook extraordinary measures to adopt an election plan which minimizes minority voting strength.

In light of these considerations, I cannot conclude, as I must under the Voting Rights Act, that the county has sustained its burden of showing that the submitted election plan was not motivated by a discriminatory purpose. Therefore, on behalf of the Attorney General, I must object to the changes occasioned by the August 20, 1987, resolution.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that these changes have neither the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. In addition, Section 51.45 of the guidelines (52 Fed. Reg. 496-497 (1987)) permits you to request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the effect of the objection by the Attorney General is to make the changes occasioned by the August 20, 1987, resolution legally unenforceable. Section 51.10 (52 Fed. Reg. 492 (1987)).

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action Bladen County plans to take with respect to this matter. If you have any questions, feel free to call Mark A. Posner (202-724-8388), Deputy Director of the Section 5 Unit of the Voting Section.

Sincerely,

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

November 9, 1987

John W. Halstead, Jr., Esq.
Jennette, Morrison, Austin
& Halstead
P. O. Box 384
Elizabeth City, North Carolina 27909

Dear Mr. Halstead:

This refers to Chapter 173, H.B. No. 490 (1977) which provides for three single-member residency districts and one double-member residency district with staggered terms, and prohibits the double-member district representatives from residing in the same township, and the implementation schedule therefor for the board of education in Camden County, North Carolina. We received the information to complete your submission on September 10, 1987.

We have considered carefully the information you have provided, as well as comments and information received from other interested parties. Initially, we note that under the method of election for which Section 5 preclearance has been granted, the board of education consisted of five members elected at large by a plurality vote for four-year, staggered terms without residency districts. Under that system, black voters have the opportunity to utilize the technique of single-shot voting, which would appear to afford them an effective opportunity to elect candidates of their choice to the board of education. The effect of the residency districts imposed by Chapter 173 eliminates that opportunity by effectively precluding the use of single-shot voting.

Our analysis has shown what appears to be a pattern of racially polarized voting in Camden County. In this context, the residency districts operate to remove the feature of the existing system (i.e., single-shot voting) that has served to compensate for the racially polarized voting and permit black voters the ability to participate meaningfully in school board elections.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. See Georgia v. United States, 411 U.S. 526 (1973); see also Section 51.52 of the Procedures for the Administration of Section 5 (52 Fed. Reg. 497-498 (1987)). Under these circumstances, I cannot conclude that the Camden County Board of Education has sustained its burden of demonstrating that the residency district requirements are free of a discriminatory effect under Section 5. Accordingly, I must, on behalf of the Attorney General, interpose an objection to the residency district requirements effected by Chapter 173.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that these changes have neither the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. In addition, Section 51.45 of the guidelines (52 Fed. Reg. 496 (1987)) permits you to request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the effect of the objection by the Attorney General is to make the use of the residency districts occasioned by Chapter 173 (1977) legally unenforceable. Section 51.10 (52 Fed. Reg. 492 (1987)).

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action the Camden County Board of Education plans to take with respect to this matter. If you have any questions, feel free to call Rebecca J. Wertz (202-724-8290), Attorney-Reviewer of the Section 5 Unit of the Voting Section.

Sincerely,

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

December 7, 1987

Henry Drake, Esq.
Attorney, Anson County
Board of Education
P. O. Box 746
Wadesboro, North Carolina 28170

Dear Mr. Drake:

This refers to the following changes affecting voting for the Anson County, North Carolina Board of Education, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c: Chapter 261 (1967) which consolidated the Anson County, Wadesboro City, and Morven City school boards into one county school board, provided for the appointment of the initial seven-member consolidated board, established direct, at-large elections beginning in 1970 for seven members by numbered positions for staggered (3-2-2), six-year terms, provided for partisan elections, a plurality vote requirement, an implementation schedule, candidate qualifications procedures and filing period, the method of filling vacancies, and the compensation of board members; Chapter 377 (1969) which increased the size of the board to nine members, and provided for the initial appointment of the two additional members and the staggering of terms of the two additional members; and Chapter 216 (1977) which provided a majority vote (runoff) requirement, decreased the length of terms from six to four years, provided an implementation schedule for the shortened terms, and changed the method of staggering the terms (4-5) of board members. We received the information to complete your submission on October 7, 1987.

We have considered carefully the information you have provided, as well as data obtained from the Bureau of the Census and information received from other interested parties. Except as indicated below, the Attorney General does not interpose any objections with regard to the changes in question. However, we feel a responsibility to point out that Section 5 of the Voting Rights Act expressly provides that the failure of the Attorney General to object does not bar any subsequent judicial action to enjoin the enforcement of such changes. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41).

With respect to the change to majority vote made in 1977 by Chapter 216 however, we are unable to reach a similar conclusion. In that regard, our analysis of precinct returns for school board elections involving black candidates shows what appears to be a pattern of racially polarized voting in Anson County. Candidates favored by the black community generally have not received significant white support, and typically have been defeated. Indeed, while there have been black candidates in every school board election since 1970 (with the exception of 1972), only two such individuals have been elected over white opposition, and the pattern of polarized voting seems to be intensifying in recent elections. In the context of such voting patterns, the use of a majority vote requirement increases the possibility of head-to-head contests between a black and white candidate in which the white typically would prevail, as evidenced by the 1984 contest in which the black candidate for Seat 4 on the board finished first by a substantial margin against two whites in the initial primary, but was soundly defeated by one of the white candidates in the runoff.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discrimimatory purpose nor a discriminatory effect. See Georgia v. United States, 411 U.S. 526 (1973); see also 28 C.F.R. 51.52(a). In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that the burden has been sustained with regard to the imposition of the majority vote requirement. Therefore, on behalf of the Attorney General, I must object to the majority vote requirement occasioned by Chapter 216 (1977).

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that this change has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. In addition, Section 51.44 of the guidelines permits you to request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the effect of the objection by the Attorney General is to make the use of the majority vote requirement prescribed by Chapter 216 (1977), legally unenforceable. See 28 C.F.R. 51.9.

Finally, we should advise you that even though we have found no basis for interposing an objection under Section 5 to other features of the elective system which have been instituted to replace the earlier appointive systems, we do note that other

features of the system may be problematic under amended Section 2 of the Act. Accordingly, I have asked my staff to consider further those concerns and they will be in contact with you concerning that matter in the near future. In the meantime, if you have any questions, feel free to call Sandra S. Coleman (202-724-6718), Director of the Section 5 Unit of the Voting Section.

Sincerely,

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

DEC 29 1987

Michael Crowell, Esq.
Tharrington, Smith & Hargrove
P. O. Box 1151
Raleigh, North Carolina 27602

Dear Mr. Crowell:

This refers to Chapter 432 of the 1987 North Carolina Session Laws which changes the method of electing the Board of Commissioners from at large with residency districts to six single-member districts and three at-large positions; the districting plan; the increase in the number of commissioners from six to nine; and the implementation schedule for Pitt County, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your submission on July 29, 1987. On October 19 and 26, 1987, we received information in response to our September 28, 1987, request for additional information and on November 9, 1987, we received information further supplementing your submission. Although we noted your request for expedited consideration, we have been unable to respond until this time.

To obtain preclearance under Section 5, a submitting authority must demonstrate that the voting changes are nondiscriminatory in both purpose and effect. See Georgia v. United States, 411 U.S. 526 (1973), and the Procedures for the Administration of Section 5 (28 C.F.R. 51.52).

As to the effect of the proposed method of election, our analysis shows that it would offer a greater opportunity for black political participation than the existing plan does. Thus, the Board of Commissioners has met its burden of showing that the proposed plan would not have a retrogressive effect. Beer v. United States, 425 U.S. 130, 141 (1976).

In addressing the issue of purpose, however, we note in particular the course of dealings that led to the increase by three in the size of the Board and the at-large method of election chosen for filling those positions. Pertinent to our review was consideration of the strong opposition of the black community to the election method selected and the Board's rejection of possible

compromises. For example, one such alternative, proposed by the Board in May 26, 1987, and passed by the state House of Representatives on May 27, appeared largely to meet the Board's stated nonracial reasons for wanting to include three at-large seats. Nevertheless, without notice to the public the Board met in a private session on June 1, 1987, and voted to abandon the compromise bill ostensibly because the black community did not accept the compromise. However, this does not appear to be supported by information, such as that contained in contemporaneous newspaper articles that the Board submitted, indicating that, as of June 1, black organizations either had indicated their support for the compromise or had indicated they were considering supporting it. Yet, the Board's abrupt withdrawal from the compromise bill ruled out further negotiations on the matter and, instead, the Board unilaterally returned to a plan which seems calculated to minimize minority voting strength.

In view of these circumstances, we are unable to conclude that the Board has met its burden of showing nondiscriminatory purpose in the adoption of this feature in its proposed election plan. Therefore, on behalf of the Attorney General, I must object to the proposed method of election.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that these changes have neither the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. In addition, Section 51.45 of the guidelines permits you to request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the effect of the objection by the Attorney General is to make Chapter 432 legally unenforceable. 28 C.F.R. 51.10.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action Pitt County plans to take with respect to this matter. If you have any questions, feel free to call Sandra S. Coleman (202-724-6718), Director of the Section 5 Unit of the Voting Section.

Sincerely,

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

MAR 18 1988

Henry T. Drake, Esq.
Anson County Attorney
P. O. Box 746
Wadesboro, North Carolina 28170

Dear Mr. Drake:

This refers to your request that the Attorney General reconsider his December 7, 1987, objection under Section 5 of the Voting Rights Act, as amended, to the adoption and implementation of a majority vote requirement for electing members of the board of education in Anson County, North Carolina. We received your letter on January 29, 1988.

We have reconsidered our earlier determination in this matter based on the information and arguments you have advanced in support of your request, along with the other information in our files. As we noted in our earlier letter, our inability to preclear implementation of the majority vote requirement was based in large part on what appeared to be the existence of a pattern of racially polarized voting in elections in Anson County. This concern, in turn, was supported by a precinct by precinct examination of elections from 1970 to the present. While, as you have pointed out and, as we recognized at that time, black candidates have on rare occasions been successful, this does not negate the existence of the overriding pattern of polarization in Anson County elections which seems more consistently to defeat black candidacies. Indeed, from our information the pattern seems to have intensified rather than diminished in recent elections. In a system where black voters form a minority of the electorate, and where black candidates are not likely to receive much support from white voters, the majority vote requirement increases the likelihood that candidates supported by the minority group will be defeated by candidates of the majority group. This, as we noted in our earlier letter, is what appears to have happened to the 1984 black candidate for school board Seat 4 and is what apparently has happened to a succession of black candidates seeking election to other county offices from 1980 to 1984.

In light of these considerations, then, we still are unable to conclude that the county has carried its burden of showing that use of the majority vote requirement has no retrogressive effect on black voting strength in school board elections. Therefore, on behalf of the Attorney General, I must decline to withdraw the objection.

Of course, Section 5 permits you to seek a declaratory judgment from the United States District Court for the District of Columbia that this change has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race or color, irrespective of whether the change previously has been submitted to the Attorney General. As previously noted, until such a judgment is rendered by that court, the legal effect of the objection by the Attorney General is to render the change in question unenforceable. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.10).

Sincerely,

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

August 1, 1988

Michael Crowell, Esq.
Tharrington, Smith & Hargrove
P.O. Box 1151
Raleigh, North Carolina 27602

Dear Mr. Crowell:

This refers to the change from at-large to single-member district elections, the districting plan, and the election schedule for the board of education in Granville County, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received the information to complete your submission on June 2, 1988.

We have examined carefully the information which you have provided, as well as information provided by other interested parties. With respect to the school board's proposed transition from at-large to single-member district elections and the proposed districting plan, we note that these changes are essentially identical to the single-member district plan proposed by the Granville County Commission which the United States District Court found to violate Section 2 of the Voting Rights Act, 42 U.S.C. 1973, as amended, in McGhee v. Granville County, North Carolina, No. 87-29-CIV-5 (E.D. N.C. February 5, 1988). We are unable to find any significant differences, in terms of the opportunities presented to minority voters, between the county commission plan and the school board plan. I must therefore conclude at this time that the findings of the District Court in the McGhee decision are applicable equally to the present submission pertaining to the Granville County Board of Education. I should note, however, that the referenced district court decision is currently pending on appeal in the Fourth Circuit Court of Appeals. Should the appeal result in reversal of the McGhee decision, reconsideration and withdrawal of the instant objection may well be warranted. See also 28 C.F.R 51.45.

Under Section 5 of the Voting Rights Act, a submitted change may not be precleared if we find that the plan clearly violates Section 2 of the Voting Rights Act, as amended, 42 U.S.C. 1973; S. Rep. No. 97-417, 97th Cong., 2d.Sess. 12 n.31 (1982). Accordingly, given the McGhee decision, I cannot conclude, as I must under

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Section 5, that the proposed changes meet the Act's preclearance requirements. Therefore, on behalf of the Attorney General, I must object to the proposed change from at-large to single-member district elections and the proposed single-member district plan. The Attorney General will make no determination on the proposed election schedule at this time.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that this change has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the effect of the objection by the Attorney General is to make the proposed single-member district plan legally unenforceable. 28 C.F.R. 51.10.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action the Granville County Board of Education plans to take with respect to this matter. If you have any questions, feel free to call Sandra S. Coleman (202-724-6718), Director of the Section 5 Unit of the Voting Section.

Sincerely,

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

JPT:LLT:TGL:gmh:dvs
DJ 166-012-3
T1101-1102
Y0899

December 29, 1988

Michael Crowell, Esq.
Tharrington, Smith & Hargrove
P. O. Box 1151
Raleigh, North Carolina 27602

Dear Mr. Crowell:

This refers to your request that the Attorney General reconsider the August 1, 1988, objection under Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c, to the change from at-large to single-member district elections and the districting plan for the board of education in Granville County, North Carolina.

This also refers to the implementation schedule, including the April 11 and May 2, 1989, special elections, for the new election system, submitted to the Attorney General pursuant to Section 5. We received your letter and submission on November 4, 1988.

As indicated in the August 1, 1988 objection letter, the objection was interposed because we could not find any significant differences, in terms of the opportunities presented to minority voters, between the school board plan and the county commission plan, which the United States District Court found to violate Section 2 of the Voting Rights Act, as amended, 42 U.S.C. 1973, in McGhee v. Granville County, No. 87-29-CIV-5 (E.D.N.C. Feb. 5, 1988). In view of the pending appeal of that decision, we noted that if the appeal resulted in a reversal of the McGhee decision, reconsideration and withdrawal of the objection could be warranted.

As your request for reconsideration points out, the United States Court of Appeals for the Fourth Circuit has reversed the district court. McGhee v. Granville County, No. 88-1553 (4th Cir. Oct. 21, 1988). Accordingly, pursuant to the reconsideration guidelines promulgated in the Procedures for the Administration of Section (28 C.F.R. 51.48), the objection interposed to the single-

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member district election system and districting plan is hereby withdrawn. In addition, the Attorney General does not interpose any objection to the 1989 implementation schedule. However, we feel a responsibility to point out that Section 5 of the Voting Rights Act expressly provides that the failure of the Attorney General to object does not bar any subsequent judicial action to enjoin the enforcement of such changes. See also 28 C.F.R. 51.41.

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

cc: Leslie J. Winner, Esq.
G. K. Butterfield, Esq.

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

DEC 4 1989

Michael Crowell, Esq.
Tharrington, Smith & Hargrove
P.O. Box 1151
Raleigh, North Carolina 27602

Dear Mr. Crowell:

This refers to Chapter 195, H.B. 595 (1989), which allows, until August 1, 1990, the board of commissioners to change its method of election without holding a referendum election and permits the adoption of specified additional election features; and the June 26, 1989, Resolution of the board of commissioners, which implements Chapter 195 (1989) to provide for an increase in the number of commissioners from five to seven; a change in the method of election from at large by majority vote and staggered terms (3-2) to four commissioners elected from single-member districts and three commissioners elected at large, all by plurality vote for staggered terms (4-3), with the three at-large seats elected concurrently without numbered posts; a districting plan; an implementation schedule; and procedures for selecting party nominees in the event of a tie in the primary for Lee County, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. Information completing your submission was received on November 9, 1989.

The information initially provided by the county with respect to these changes was received by the Attorney General on June 19 and July 7, respectively. Thereafter, on August 16, 1989, pursuant to Section 51.37 of the Procedures for the Administration of Section 5, 28 C.F.R. 51.37, we requested additional information needed to analyze the changes. In response you submitted additional information on several dates

culminating with a letter received by us on November 9, 1989, in which you specifically addressed various allegations by other interested parties which we had passed on to you at your request. As we explained in our November 20, 1989, letter, we found the supplemental information you provided in the response received November 9, 1989, necessary to a proper review of the changes under Section 5 and we, therefore, advised you that the statutory sixty-day period for substantive review of the submitted changes began with your response received November 9, 1989, making a final determination regarding the submitted changes due no later than January 8, 1990.

By your November 29, 1989, letter, you have taken the position that the response received November 9, 1989, does not materially supplement the county's submission so as to extend the statutory sixty-day period of review to January 8, 1990, and you therefore take the position that the deadline for an objection under Section 5 is December 4, 1989. Of course, we disagree.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has no discriminatory purpose or effect. See Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.52(a)). In making the required determination, we view it important to take into consideration all of the information and comments available to us. Because we have not had an adequate opportunity to do so subsequent to receiving your November 9 response in this matter and to eliminate any question about whether these changes may be considered as precleared after December 4, 1989, we feel it incumbent upon us to interpose an objection, provisionally, until such time as we can complete a careful analysis of this submission. See Procedures for the Administration of Section 5 (28 C.F.R. 51.52(c)). Therefore, on behalf of the Attorney General, I must interpose an objection to the submitted changes at the present time. However, we will continue to evaluate all of the material that we have received, including the supplemental information and arguments received November 9, 1989, and will let you know as soon as a determination on the merits can be made. At that time we will advise you as to whether the objection interposed herein will be continued or withdrawn. In the meantime, we understand that the county is anxious to obtain a determination quickly and we will expedite our review to the extent possible consistent with our responsibilities under Section 5.

If you have any questions concerning these matters, feel free to call Sandra S. Coleman, Deputy Chief, Voting Section, at 202-724-6718.

Sincerely,

/s/James P. Turner
Acting Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

December 18, 1989

Larry S. Overton, Esq.
Overton & Carter
P.O. Box 126
Ahoskie, North Carolina 27910

Dear Mr. Overton:

This refers to the eight annexations to the Town of Ahoskie in Hertford County, North Carolina, presently under submission to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. One of these annexations was adopted in 1969 by Chapter No. 360, H.B. No 478 (1969); two were adopted in 1970 on May 18 and August 3, respectively; one was adopted on June 29, 1976; one was adopted in 1988 by Ordinance No. 1988-22; and three were adopted in 1989 by Ordinance Nos. 1989-02, 1989-03, and 1989-04. We received your submission of the 1969 annexation and the information to complete your submission of the other annexations on October 17, 1989.

We have considered carefully the information that you have provided, as well as Census data and information and comments from other interested parties. As a result, the Attorney General does not interpose any objections to the annexations pursuant to Chapter 360, the ordinances adopted on May 18, 1970, August 3, 1970, and June 29, 1976, and Ordinance No. 1988-22. However, we feel a responsibility to point out that Section 5 of the Voting Rights Act expressly provides that the failure of the Attorney General to object does not bar any subsequent judicial action to enjoin the enforcement of these changes. See 28 C.F.R. 51.41.

With regard to the 1989 annexations, we are unable to reach a like conclusion. At the outset, we note that the town's total 1980 population was 4,887, of whom 2,232 (45.7 percent) were black citizens. In addition, although the total population of the town decreased between 1970 and 1980, the black proportion of the town's population increased by 3.8 percentage points during that period.

Based on 1980 Census data and the information you have provided, it appears that the instant annexations have had the cumulative effect of increasing the black proportion of the town's population by 7.5 percent from the level that existed prior to the annexations. We also note that even though the town is close to 50 percent black in total population, black candidates have had extremely limited success in winning seats on the five-member town council. Except for a brief period in the mid-1980's, the council has never had more than one black member at any one time although a number of black candidates have sought the office and those candidates appear to have been the choice of black voters. The limited success of black candidates thus seems to have been due largely to a pervasive pattern of racially polarized voting in town elections in combination with the existing at-large electoral structure for the town council.

According to information you have provided, the town's original proposal, formulated in 1988, for the annexations adopted in 1989 involved four discrete areas, designated as Study Areas I, II, III and IV. The combined population of these four areas would have added approximately equal numbers of black and white citizens to the town. When, later, the town learned that Study Area IV could not be annexed, it nevertheless pursued the annexation of the other three areas, which would have added a total of 682 residents to the town, 398 or 58 percent of whom would have been black persons.

In the meantime, during the November 1988 elections, black persons, who constituted about 56 percent of all registered voters in the county, obtained a majority of the seats on the Hertford County Board of Commissioners. Black persons also retained a majority of the seats on the county board of education. In December 1988, the town initiated efforts to reduce the size of the areas proposed to be annexed with the result that, in January 1989, the town adopted modified annexations which bring in a total of 445 residents, 252 or 57 percent of whom are white. These annexations, as thus modified, are the ones presently under submission.

The town has indicated that the alterations in the size of the three areas finally proposed for annexation were accomplished for economic reasons, i.e., to reduce the amount of bonds that would have to be sold to pay the cost of installing municipal services, while also considering such factors as population, property tax values, and the years of amortization required to repay the bond debt. In our view, however, the town's selections among potential white and black residential areas to be included or excluded from these annexations cannot be reconciled on the basis of these neutral considerations.

For example, information you have provided shows that the town chose to exclude from Study Area II a black residential community of approximately the same population and tax valuation as a white residential area included in the annexation in Study Area III, when the capital cost of providing municipal services to the white residential area was more than five times that of the excluded black residential area. In addition, our information is that residents in the annexed white residential area were opposed to annexation, while the black residents who were excluded from the Area II annexation made known their strong desire to become town residents. Nor has it gone unnoticed that the effect of the town's decisions to alter the areas finally annexed is to maintain the same percentage of black persons in the town's population following annexation as existed in 1980 and that these decisions were made coincident with increasing black electoral gains in the county.

Finally, we note some indication that black persons may have been excluded from annexation in order to hold in reserve a number of black residents to balance the future annexation of white residents. Such racial considerations, however, are not permissible under Section 5 as a means of avoiding the otherwise naturally dilutive consequences of annexations. See City of Richmond v. United States, 422 U.S. 358, 378 (1979); see also City of Rome v. United States, 446 U.S. 156 (1980); 28 C.F.R. 51.61.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has no discriminatory purpose or effect. See Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.52). In satisfying its burden, the submitting authority must demonstrate that the proposed changes are not tainted, even in part, by an invidious racial purpose; it is insufficient simply to establish that there are some legitimate, nondiscriminatory reasons for the voting changes. See Village of Arlington Heights v. Metropolitan Housing Development Corp., 429 U.S. 252, 265-66 (1977); City of Rome v. United States, 422 U.S. 156, 172 (1980); Busbee v. Smith, 549 F. Supp. 494, 516-17 (D.D.C. 1982), aff'd, 459 U.S. 1166 (1983). In light of the circumstances discussed above, I cannot conclude, as I must under the Voting Rights Act, that the town has sustained its burden in this instance. Therefore, on behalf of the Attorney General, I must object to the three 1989 annexations.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that these annexations have neither the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. In addition, Section 51.45 of the guidelines permits you to request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the annexations pursuant to Ordinances 1989-02, 1989-03, and 1989-04 continue to be legally unenforceable insofar as they affect voting. See Dotson v. City of Indianola, 514 F. Supp. 397, 403 (N.D. Miss. 1981) (three-judge court) (municipal residents of areas annexed after Section 5 coverage date may not participate in municipal elections unless and until the annexations receive Section 5 preclearance); see also 28 C.F.R. 51.10.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action the Town of Ahoskie plans to take with respect to these matters. If you have any questions, feel free to call Ms. Lora Tredway (202-724-8290), an attorney in the Voting Section.

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

January 8, 1990

Michael Crowell, Esq.
Tharrington, Smith & Hargrove
P.O. Box 1151
Raleigh, North Carolina 27602

Dear Mr. Crowell:

This refers to our letter of December 4, 1989, interposing a provisional objection, under Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c, to Chapter 195, H.B. 595 (1989), which allows, until August 1, 1990, the board of commissioners to change its method of election without holding a referendum election and permits the adoption of specified additional election features, and the June 26, 1989, Resolution of the board of commissioners, which implements Chapter 195 (1989) to provide for an increase in the number of commissioners from five to seven; a change in the method of election from at large by majority vote and staggered terms (3-2) to four commissioners elected from single-member districts and three commissioners elected at large, all by plurality vote for staggered terms (4-3), with the three at-large seats elected concurrently without numbered posts; a districting plan; an implementation schedule; and procedures for selecting party nominees in the event of a tie in the primary for Lee County, North Carolina.

As promised in the December 4, 1989, letter, we have now completed our analysis of the proposed changes. In doing so, we have considered carefully all of the information and materials you have supplied, along with information from other interested parties and the Bureau of the Census. As a result, we find no basis for continuing the objection to the changes involved in Chapter 195 (1989) or to the proposed method of election changes, districting plan, and related changes involved in the June 26, 1989, Resolution. Accordingly, the objection is hereby withdrawn. However, we feel a responsibility to point out that

Section 5 of the Voting Rights Act expressly provides that the failure of the Attorney General to object does not bar any subsequent judicial action to enjoin the enforcement of such changes. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41).

Sincerely,

for James P. Turner
Acting Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

Michael Crowell, Esq.
Tharrington, Smith & Hargrove
P. O. Box 1151
Raleigh, North Carolina 27602

APR 6 1990

Dear Mr. Crowell:

This refers to the following voting changes for the board of commissioners and the board of education of Perquimans County, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c:

1. Act No. 104, H.B. No. 789 (1989), which provides for an increase in the number of county commissioners from five to seven, the elimination of the residency requirement, the use of plurality vote in primary elections, the method of staggering terms, the appointment of two interim board members, and the implementation schedule; and

2. Act No. 105, H.B. No. 790 (1989), which provides for an increase in the number of school board members from five to seven, the elimination of the residency requirement, the method of staggering terms, the appointment of two interim board members, and the implementation schedule.

We received the information to complete these submissions on February 9, 1990.

We have carefully considered the information you have provided as well as comments and information from other interested parties. At the outset, we note that presently both the board of commissioners and the school board are chosen in at-large elections, and further that each board member is elected from a particular residency district. Our analysis of the election returns indicates that, in the context of an apparent pattern of racially polarized voting, this election system has enabled the white majority of the electorate to control county elections to the extent of precluding black voters from electing candidates of their choice to county office. Indeed, despite numerous black candidacies, which have been supported in major part by black voters, no black person has been elected to either board.

As we understand it, it was in this setting that members of the black community approached county officials with their concerns that the at-large system denies black citizens an equal opportunity to participate in the political process, a result prohibited by Section 2 of the Voting Rights Act, 42 U.S.C. 1973. In response, a study committee was established to examine whether a district method of election should be adopted.

However, the steps taken by the county in pursuit of its stated goal of considering the adoption of a districting plan would appear to have been of a rather dubious nature. The only two districting options ever presented to the study committee for its consideration, by those retained by the county to advise them in this regard, were plainly flawed. One option was a malapportioned plan for five-member boards which contained a black majority district; the other was an unusually configured proposal for seven-member boards with a double-member district which would have a black population majority. These options were accompanied by a recitation of numerous problems that allegedly would result from adopting either districting concept and, in fact, the committee essentially was told that any districting of the county likely would pose practical as well as constitutional problems. These perceived problems also were impressed upon the minority group representatives who had been advocating the change to districts.

Relying on these less than candid representations, the study committee recommended and the legislature later enacted the instant changes which retain the at-large election method as modified by the elimination of the residency district requirement. However, contrary to the representations made by those advising the committee in behalf of the county, our analysis of the demographic patterns in the county indicates that none of the purported concerns advanced by the county poses any real obstacle to adopting a fairly drawn, constitutional districting plan. In fact, relatively simple and easily discernible modifications to the options put forth by the county would result in a plan under either the 5-member or 7-member format which would have black majorities in districts electing one of five members or two of seven members. The county seems readily to concede that such districting plans would afford black voters a more realistic opportunity to elect representation of their choice than does the at-large system even as modified by the removal of the restrictive residency district feature.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change neither has a discriminatory purpose nor a discriminatory effect. See Georgia v. United States, 411 U.S. 526 (1973); see also the

Procedures for the Administration of Section 5 (28 C.F.R. 51.52). The effect standard requires that a change not "lead to a retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise." Beer v. United States, 425 U.S. 130, 141 (1976). The submitted changes, by removing the residency district requirement and thus allowing blacks to utilize the election device of single-shot voting, do not have a prohibited retrogressive effect. However, even though the change here cannot be said to be retrogressive, the manner in which it was accomplished seems to have been calculated to maintain black voting strength at a minimum level and such an intent cannot be countenanced under the Voting Rights Act. City of Richmond v. United States, 422 U.S. 358 (1975); Busbee v. Smith, 549 F. Supp. 494 (D.D.C. 1982), sum. aff'd, 459 U.S. 1166 (1983). In any event, under the circumstances involved here, I cannot conclude, as I must under the Voting Rights Act, that the Section 5 burden has been satisfied in regard to purpose. Therefore, on behalf of the Attorney General I must object to the changes in the method of electing both boards occasioned by Act Nos. 104 and 105. With regard to the other submitted changes (the increase in the size of the boards, and the implementation and appointment provisions), no determination is appropriate because they are directly related to the changes to which an objection is being interposed.

Of course, as provided by Section 5 of the Voting Rights Act, the board of commissioners and the board of education have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that these changes do not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color. In addition, Section 51.45 of the guidelines permits you to request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the submitted changes continue to be legally unenforceable. 28 C.F.R. 51.10.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action the Perquimans County Board of Commissioners and the Perquimans County Board of Education plan to take with respect to this matter. In that regard, I have asked the Voting Section to consider whether the at-large system violates Section 2 of the

Act, should the boards determine to take no further action toward changing that system. If you have any questions, feel free to call Mark A. Posner (202-724-8388), an attorney in the Voting Section.

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

George Daly, Esq.
Attorney, Anson County
Board of Education
Suite 226, One North McDowell
101 North McDowell Street
Charlotte, North Carolina 28204

MAY 29 1990

Dear Mr. Daly:

This refers to Chapter 288 (1989), which provides for a change in the method of election for the county board of education from nine members elected at large by numbered positions and plurality vote to seven members elected from single-member districts with terms staggered 4-3 and two members elected at large with terms staggered 1-1; a 40-percent plurality with a runoff requirement for nomination to the at-large positions; nomination for district seats under general state law which is a 40-percent plurality; the implementation schedule; and the use of the method of election for the 1990 election in Anson County, North Carolina, presently under submission to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received the information to complete your submissions on March 29, 1990; supplemental information was received April 9, 11, 25, and 30, 1990.

We have considered carefully all of the information and materials you have supplied, along with information from other interested parties and the Bureau of the Census. At the outset we note that black candidates have had limited success in at-large countywide elections, despite seemingly good support from black voters, due largely to a prevailing pattern of racially polarized voting in combination with the existing at-large structure in a county whose electorate is majority white. Under

the existing system, all positions for the school board are at large with a plurality win requirement, but since each position is defined by a numbered place, there is no opportunity for single shot voting, a technique which to some extent allows minority voters to compensate for their numerical minority within an at-large electorate.

It is against this electoral background in Anson County, therefore, that concerns have been raised with respect to the proposed system. While the school board has adopted fairly drawn single-member districts for electing seven of its members, it also proposes to elect two at-large positions by staggered terms, a choice that, like the existing system, does not permit single shot voting, and to elect the proposed at-large positions by a 40-percent plurality win rule. We note that a 40-percent plurality requirement can lead to a situation in which a candidate supported by black voters might win a plurality of the votes in a primary election, but be forced into a head-to-head runoff contest where the black supported candidate would have to receive a majority of the votes in order to secure nomination. Thus, the 40-percent requirement, especially in conjunction with the staggered term provision, could place candidates preferred by the minority community in the same disadvantageous position in which such candidates have been in the past when they have run at large and lost in countywide elections for either a single position or a numbered place contest.

With regard to the proposed electoral structure, we note that a stated purpose for many of the choices reflected in the 7-2 system is to afford incumbent white officeholders the opportunity to retain their positions on the county school board. In particular, it appears that the school board proposes to retain the two at-large seats on a staggered basis primarily to prevent white incumbents from having to challenge each other either in a single-member district contest or in contests for the at-large positions. Moreover, the school board seeks to retain elements of the existing at-large structure notwithstanding the electoral history in Anson County which demonstrates that such positions are almost certainly foreclosed to black voters. While we recognize that preservation of incumbency certainly is not necessarily an inappropriate consideration, it cannot be accomplished at the expense of minority voting potential. See Ketchum v. Byrne, 740 F.2d 1398, 1408-09 (7th Cir. 1984), cert. denied, 471 U.S. 1135 (1985).

Nor do we find it insignificant that there is strong opposition within the Anson County black community to the retention of at-large positions and that black and white community leaders have requested that the size of the board be reduced to seven members which was its size when state legislation created it as an elected body and which is the present size of the county commission. While we are mindful that

the board's size was expanded some years ago from seven to nine members specifically to permit the appointment of two minority members, and in conjunction with the Department's efforts to desegregate county schools, maintaining a nine-member board no longer serves the original purpose for expanding to that size, especially if, as proposed, the eighth and ninth members are to be elected in the restrictive at-large manner. Of course, we do not suggest that the board members must reduce their numbers, since we understand that alternative nine-member districting plans would provide black voters with an equal opportunity to participate in the electoral process and to elect candidates of their choice to four of the nine seats. Indeed, our information is that such an alternative was proposed but rejected by the school board in favor of retaining the at-large seats.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has no discriminatory purpose or effect. See Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.52). In satisfying its burden, the submitting authority must demonstrate that the proposed change is not tainted, even in part, by an invidious racial purpose; it is insufficient simply to establish that there are some legitimate, nondiscriminatory reasons for the voting change. See Village of Arlington Heights v. Metropolitan Housing Development Corp., 429 U.S. 252, 265-66 (1977); City of Rome v. United States, 422 U.S. 156, 172 (1980); Busbee v. Smith, 549 F. Supp. 494, 516-17 (D.D.C. 1982), aff'd, 459 U.S. 1166 (1983). In light of these principles, and under the circumstances discussed above, I cannot conclude, as I must under the Voting Rights Act, that the county school board has sustained its burden in this instance. Therefore, on behalf of the Attorney General, I must object to the method of electing the Anson County Board of Education provided for in Chapter 288, insofar as it incorporates the at-large election feature with staggered terms and run off vote requirement.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that these changes have neither the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. In addition, Section 51.45 of the guidelines permits you to request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the voting changes occasioned by Chapter 288 continue to be legally unenforceable. See also 28 C.F.R. 51.10.

Because the implementation schedule is directly related to the objectionable features of the proposed electoral structure, the Attorney General will make no determination concerning this matter at this time. See 28 C.F.R. 51.22(b). In addition, we note that the date for the proposed 1990 implementation of the electoral system provided by Chapter 288 has passed. Accordingly, no determination by the Attorney General is now required or appropriate concerning that matter. See 28 C.F.R. 51.35.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action the Anson County board of education plans to take with respect to these matters. If you have any questions, feel free to call Ms. Lora Tredway (202-307-2290), an attorney in the Voting Section.

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

JRD:GS:CM:lrj
DJ 166-012-3
Z2046

Voting Section
P.O. Box 66128
Washington, D.C. 20035-6128

Aubrey S. Tomlinson, Jr., Esq.
Davis, Sturges & Tomlinson
P.O. Drawer 708
Louisburg, North Carolina 27549

JUN 28 1990

Dear Mr. Tomlinson:

This refers to Chapter 306, H.B. No. 555 (1967), which provides for a change from a plurality to a majority-vote requirement in primary elections for the board of commissioners in Franklin County, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your initial submission on February 6, 1990; supplemental information was received on March 21 and 22, and May 3, 1990.

We have carefully considered the information you have provided as well as information from the Census and other interested parties. We note at the outset that while the population of Franklin County is 41% black, no black has ever been elected to the Franklin County Commission, although in May of this year for the first time ever a black has received his party's nomination for a seat on the commission. The five commission members are elected at large by residency districts in partisan elections. Prior to the adoption of Chapter 306, a plurality of the vote was sufficient to obtain nomination for a position on the commission. Since 1968, however, because Chapter 306 was enforced despite the absence of Section 5 preclearance, nomination has required a majority vote in the primary, and this was interpreted as authorizing runoff elections in cases where no candidate received a majority. In 1978 the enforcement of this change denied the Democratic Party nomination to a black candidate who received a plurality of the vote in the primary but who was subsequently defeated in a runoff.

In jurisdictions where elections are characterized by racial bloc voting a majority-vote requirement has been recognized as having the potential to dilute minority voting strength by producing head-to-head contests in which the victor is determined by the white voting majority. See, e.g., City of Port Arthur v. United States, 459 U.S. 159 (1982); Rogers v. Lodge, 458 U.S. 613, 627 (1982); S. Rep. No. 417, 97th Cong., 2d Sess. 6 (1982). Our review of Franklin County election returns indicates that while blacks have achieved some success in contests for county positions, racial bloc voting remains present to a significant degree. Thus the change from a plurality-win system to a majority-vote requirement appears to effect a retrogression in the position of minority voters in Franklin County, especially since, in school board elections where the plurality-win system continues in effect, black voters have enjoyed a fair degree of success.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has no discriminatory purpose or effect. See Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.52). In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that the burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the adoption of a majority-vote requirement in primary elections for the Franklin County Commission.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that this change has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. In addition, Section 51.45 of the guidelines permits you to request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the submitted change continues to be legally unenforceable. 28 C.F.R. 51.10.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action Franklin County plans to take with respect to this matter. If you have any questions, feel free to call George Schneider (202-307-2385), an attorney in the Voting Section. Refer to File No. Z2046 in any response to this letter so that your correspondence will be channeled properly.

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division

U.S Department of Justice

Civil Rights Divis .

Office of the Assistant Attorney General

Washington, D.C. 20530

September 23, 1991

George Daly, Esq.
Suite 226, One North McDowell
101 North McDowell Street
Charlotte, North Carolina 28204

Dear Mr. Daly:

This refers to Chapter 33 (1991), which provides for a method of election for the county board of education with seven single-member districts and two at-large positions, the districting plan, a 40-percent plurality vote requirement, concurrent terms for the at-large positions, the procedure for filling vacancies, and the implementation schedule in Anson County, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, as amended, 42 U.S.C. 1973c. We received the information to complete your submission on July 24, 1991.

We have carefully considered the information you have provided, as well as information from the Census, other interested parties, and the federal court litigation concerning the county school board's method of election. At the outset, we note that this submission follows two previous Section 5 objections to the method of electing the county school board. In December 1987, we interposed an objection to the majority vote requirement contained in Chapter 216 (1977). In May 1990, we interposed an objection to the revised method of election contained in Chapter 288 (1989) insofar as it included at-large elections with staggered terms and a 40-percent plurality vote requirement for two of the nine seats on the school board. On both occasions, we found that black voters had limited success electing candidates of their choice for local offices in countywide elections due to prevailing patterns of racially polarized voting.

The election plan in the current submission retains the same features as the plan contained in Chapter 288 (1989), except that the elections for the two at-large seats would be held concurrently, thereby affording voters the opportunity to engage in single-shot voting for those seats. Under Section 5, the board has the burden of showing that the proposed changes do not have a racially discriminatory purpose and will not have a racially discriminatory effect. See Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.52).

To meet this burden, the board has asserted that black voters would have a reasonable opportunity to elect a candidate of their choice to an at-large seat due in part to a reduction in polarized voting, which it contends was exhibited in recent elections for statewide office. We have analyzed the board's assertion in light of the evidence that, as was the case with the previous decision to retain two at-large seats, the current proposal is based upon the self-preservation interests of incumbent white board members, five of whom reside in the same single-member district. Our analysis of elections for local offices since 1980 shows a pattern of racially polarized voting, with the candidates for such offices supported by black voters usually being defeated. This pattern continued through the most recent election and, coupled with the interests of white incumbents in retaining the at-large seats for their perceived benefit, it raises concerns that the opportunity for single-shot voting contained in the present proposal still does not provide to black voters a realistic opportunity to elect a candidate of their choice to one of those positions. While we recognize that incumbency preservation is not necessarily an inappropriate consideration, it may not be accomplished at the expense of minority voting potential. See Garza v. County of Los Angeles, 918 F.2d 763 (9th Cir. 1990), cert. denied, 59 U.S.L.W. 3461 (1991); Ketchum v. Bryne, 740 F.2d 1398, 1408-09 (7th Cir. 1984), cert. denied, 471 U.S. 1135 (1985).

In addition, the school board has failed to establish that interests other than incumbency protection would be served by retaining the at-large seats. For example, the school board has not attempted to show that the county commission has been hampered in any way by its use of a single-member district system. Moreover, we are aware that, notwithstanding the settlement of the litigation concerning the board's method of election, leaders of the black community continue to oppose the inclusion of the two at-large seats in the proposed system.

In these circumstances, we are unable to conclude that the Board has met its burden under Section 5. Therefore, on behalf of the Attorney General, I must object to Chapter 33 (1991) insofar as it includes two at-large positions and the 40-percent plurality requirement for nomination for those positions.

We note that under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed changes have neither the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. In addition, you may request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, Chapter 33 (1991) continues to be legally unenforceable. Clark v. Roemer, 59 U.S.L.W. 4583 (U.S. June 3, 1991); 28 C.F.R. 51.10 and 51.45.

Because the districting plan and the other proposed changes are related to the objectionable method of election, the Attorney General will make no determination regarding those changes at this time. 28 C.F.R. 51.22(b).

To enable this Department to meet its responsibilities to enforce the Voting Rights Act, please inform us, within 20 days, of the course of action the Anson County Board of Education plans to take with respect to these matters. If you have any questions, feel free to call David Marblestone (202-307-3113), an attorney in the Voting Section.

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

Tiare B. Smiley, Esq.
Special Deputy Attorney General
P.O. Box 629
Raleigh, North Carolina 27602-0629

DEC 18 1991

Dear Ms. Smiley:

This refers to Chapter 675 (1991), which provides for the 1991 redistricting and a change in the method of election from 42 single-member districts and 30 multimember districts to 75 single-member districts and 20 multimember districts for the House of Representatives; Chapter 676 (1991), which provides for the 1991 redistricting plan and a change in the method of election from 22 single-member districts and 28 multimember districts to 34 single-member districts and 8 multimember districts for the Senate; and Chapter 601 and Chapter 761 (1991), which provide for the increase from eleven to twelve congressional districts and the 1991 redistricting plan for the congressional districts for the State of North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your response to our request for more information on November 5, 1991; supplemental information was received on November 18, 20, 21, 25, 26 and 27, and December 4, 10, 12 and 13, 1991.

We have carefully considered the information you have provided, as well as Census data and information and comments from other interested persons. At the outset, we note that 40 of North Carolina's 100 counties are covered under the special provisions of Section 5 of the Voting Rights Act. As it applies to the redistricting process, the Voting Rights Act requires the Attorney General to determine whether the submitting authority has sustained its burden of showing that each of the legislative choices made under a proposed plan is free of racially discriminatory purpose or retrogressive effect and that the submitted plan will not result in a clear violation of Section 2 of the Act. In the case of statewide redistrictings such as the instant ones, this examination requires us not only to review the

overall impact of the plan on minority voters, but also to understand the reasons for and the impact of each of the legislative choices that were made in arriving at a particular plan.

In making these judgments, we apply the legal rules and precedents established by the federal courts and our published administrative guidelines. See, e.g., 28 C.F.R. 51.52(a), 51.55, 51.56. For example, we cannot preclear those portions of a plan where the legislature has deferred to the interests of incumbents while refusing to accommodate the community of interest shared by insular minorities, see, e.g., Garza v. Los Angeles County, 918 F.2d 763, 771 (9th Cir. 1990), cert. denied, 111 S. Ct. 681 (1991); Ketchum v. Byrne, 740 F.2d 1398, 1408-09 (7th Cir. 1984), cert. denied, 471 U.S. 1135 (1985), or where the proposed plan, given the demographics and racial concentrations in the jurisdiction, does not fairly reflect minority voting strength. Thornburg v. Gingles, 478 U.S. 30 (1986); Hastert v. State Board of Elections, ____ F. Supp. ____ (N.D. Ill., Nov. 6, 1991), 1991 WL 228185; Wilkes County, Georgia v. United States, 450 F. Supp. 1171, 1176 (D.D.C. 1978), aff'd. mem., 439 U.S. 999 (1978).

Such concerns are frequently related to the unnecessary fragmentation of minority communities or the needless packing of minority constituents into a minimal number of districts in which they can expect to elect candidates of their choice. See 28 C.F.R. 51.59. We endeavor to evaluate these issues in the context of the demographic changes which compelled the particular jurisdiction's need to redistrict and the options available to the legislature. Finally, our entire review is guided by the principle that the Act ensures fair election opportunities and does not require that any jurisdiction guarantee minority voters racial or ethnic proportional results.

With this background in mind, our analysis shows that, in large part, the North Carolina House, Senate and Congressional redistricting plans meet the Section 5 preclearance requirements. Each plan, however, has particular problems which raise various concerns for us under the Voting Rights Act. We describe each of these problem areas separately below.

Respecting the House plan, the proposed configuration of district boundary lines in the following three areas of the state appear to minimize black voting strength: the Southeast area, involving Sampson, Pender, Bladen, Duplin, New Hanover, Wayne, Lenoir and Jones Counties; the Northeast area in which the state proposes to create District 8; and Guilford County.

In general, it appears that in each of these areas the state does not propose to give effect to overall black voting strength, even though it seems that boundary lines logically could be drawn to recognize black population concentrations in each area in a

However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the change in the length of the term of the judge elected in 1990 to fill a vacancy in multimember superior court District 3A continues to be legally unenforceable. Clark v. Roemer, 111 S.Ct. 2096 (1991); 28 C.F.R. 51.10 and 51.45.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the State of North Carolina plans to take concerning this matter. If you have any questions, please call J. Gerald Hebert (202-307-6292), Deputy Chief of the Voting Section. Refer to File Nos. 91-3884 and 91-3885 so that your correspondence will be channeled properly.

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

JAN 27 1992

George Daly, Esq.
Suite 226, One North McDowell
101 North McDowell Street
Charlotte, North Carolina 28204

Dear Mr. Daly:

This refers to your request that the Attorney General reconsider the September 23, 1991, objection under Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c, to Chapter 33 (1991), which provides for a method of election for the Board of Education of Anson County, North Carolina. We received your letter on November 27, 1991.

We have reconsidered our earlier determination in this matter based on the information and arguments you advanced in support of your request, along with other information in our files. After reviewing the information available to us, we do not see any arguments that would provide a basis for changing our original determination.

In light of these considerations, I remain unable to conclude that the Anson County Board of Education has carried its burden of showing that the submitted changes have neither a discriminatory purpose nor a discriminatory effect. See Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.52). Therefore, on behalf of the Attorney General, I must decline to withdraw the objection to Chapter 33.

As we previously advised, you may seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed change has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. We remind you that until such a judgment is rendered by that court, the objection by the Attorney General remains in effect and the proposed change continues to be legally unenforceable. 28 C.F.R. 51.10 and 51.48(d).

We are concerned that no elections for the Board have been held since 1988, and Board members who have been elected under the at-large election system are continuing to hold over in

office. Your November 21, 1991, letter states that our "failure to reconsider [the objection] may well mean that the Board decides to wait and see what happens next, rather than spend scarce money looking for a solution." We believe that the better course would be for the Board to seek to implement an election plan that satisfies the Voting Rights Act. In any event, in light of the Board's course of conduct and your representations, we have a responsibility to consider what further action may be necessary and appropriate to ensure prompt compliance with the Voting Rights Act.

To enable us to meet our responsibility under the Voting Rights Act, please inform us at your earliest convenience of the action the Board plans to take regarding this matter. If you have any questions, you should call Steven H. Rosenbaum (202-307-3143), Deputy Chief of the Voting Section.

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division

U.S. Department o. ustice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

April 21, 1992

James R. Trotter, Esq.
General Counsel
State of North Carolina
Office of the Governor
116 West Jones Street
Raleigh, North Carolina 27611

Dear Mr. Trotter:

This refers to the change in the length of terms of the judges elected in 1990 to fill vacancies in Districts 3A and 7A of the Superior Court of the State of North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your response to our request for additional information on February 21, 1991.

We have considered carefully the information you have provided, as well as information received from other interested persons, and our prior Section 5 reviews of superior court changes. In your submissions, you suggest that there has not been any change affecting voting within the meaning of Section 5 as a result of the Governor's decision to provide for eight-year terms of office for the judges at issue. We do not agree. In the past, those superior court judges who were elected to fill vacancies served only the remainder of the eight-year term. The submitted changes provide that the judges at issue will serve for a full eight-year term. These changes determine when elections will be held for the two affected judgeships and, with regard to the positions in District 3A, whether the elections will be concurrent or staggered. These kinds of changes are covered by Section 5.

The Attorney General does not interpose any objection to the granting of an eight-year term of office to the superior court judge elected in 1990 to fill a vacancy in single-member superior court District 7A. However, we note that Section 5 expressly provides that the failure of the Attorney General to object does

not bar subsequent litigation to enjoin the enforcement of the changes. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41).

We cannot, however, reach a similar conclusion with regard to the granting of an eight-year term of office to the superior court judge elected in 1990 to fill a vacancy in multimember judicial District 3A, which is comprised of Pitt County. This proposed change would have the effect of eliminating concurrent terms in District 3A, thereby eliminating the opportunity to single-shot vote.

As you know, we previously have interposed an objection to the use of numbered posts in multimember districts of the state's superior court. Numbered posts in multimember election districts eliminate the opportunity for minority voters to employ single-shot voting. Such a change may, in the context of racially polarized voting, adversely affect minority voters' attempts to elect representatives of their choice. We note that the state subsequently abandoned the use of numbered posts.

In District 3A, the staggering of terms, like numbered posts, would have the effect of eliminating the opportunity to single-shot vote. Our analysis of election returns in District 3A indicates that racially polarized voting exists in Pitt County. In the context of such polarized voting patterns, single-shot voting provides minority voters an opportunity to attempt to elect representatives of their choice. Therefore, the staggering of terms of superior court judges in multimember District 3A will "lead to a retrogression in the position of ... minorities with respect to their effective exercise of the electoral franchise." Beer v. United States, 425 U.S. 130, 141 (1976).

Section 5 requires the state to demonstrate that the proposed change "does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color." 42 U.S.C. 1973c. In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that the burden has been sustained in this instance. Accordingly, on behalf of the Attorney General, I must object to the change in the length of the term of the judge elected in 1990 to fill a vacancy in multimember superior court District 3A.

We note that under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed change has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. In addition, you may request that the Attorney General reconsider the objection.

However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the change in the length of the term of the judge elected in 1990 to fill a vacancy in multimember superior court District 3A continues to be legally unenforceable. Clark v. Roemer, 111 S.Ct. 2096 (1991); 28 C.F.R. 51.10 and 51.45.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the State of North Carolina plans to take concerning this matter. If you have any questions, please call J. Gerald Hebert (202-307-6292), Deputy Chief of the Voting Section. Refer to File Nos. 91-3884 and 91-3885 so that your correspondence will be channeled properly.

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

November 16, 1993

Charles M. Hensey, Esq.
Special Deputy Attorney General
Elections Section
Department of Justice
P. O. Box 629
Raleigh, North Carolina 27602-0629

Dear Mr. Hensey:

This refers to Chapter 74 (1993), insofar at it postpones the implementation of mail-in voter registration from July 1, 1993, to January 1, 1995, in the State of North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your response to our request for additional information on September 17, 1993; supplemental information was received on November 15, 1993.

We have considered carefully the information you have provided, as well as information from other interested persons. According to the 1990 Census, black residents comprise 21.9 percent of the state's total population and 20.0 percent of the state's voting age population. Based on the most recent registration data available (for October 1993), the percentage of voting age blacks who are registered to vote continues to lag behind the percentage of registered whites of voting age. Statewide, 61.6 percent of eligible blacks are registered compared to 72.9 percent of eligible whites; in the 40 counties covered by Section 5, the figures are 57.6 percent and 64.8 percent, respectively. With respect to Native American residents of the state, they are primarily concentrated in Robeson County where the Native American registration rate also is lower than the white registration rate.

In July 1992, the state adopted legislation to augment the existing voter registration system to provide that residents of the state may register to vote by mail. This new procedure was to begin implementation on July 1, 1993, and in the interim period the state board of elections was to develop and approve a mail-in registration form. This change received the requisite Section 5 preclearance on October 15, 1992. The state board of elections then undertook to develop the registration form, and in April 1993 a draft form was approved by a subcommittee of a state board advisory council. However, work on the form was then halted in light of the introduction of the instant legislation in the state legislature, and on May 24, 1993, this legislation was ratified delaying implementation of the mail-in system for a year and a half until January 1, 1995. Although the state has not received Section 5 preclearance for this delay, the state has proceeded to implement it in contravention of Section 5.

On May 20, 1993, the President signed into law the National Voter Registration Act of 1993. As stated in Section 2(b)(1) of the Act, Congress enacted this legislation "to establish procedures that will increase the number of eligible citizens who register to vote in elections for Federal office." In that regard, Congress acted out of a concern that "discriminatory and unfair registration laws and procedures can have a direct and damaging effect on voter participation in elections for Federal office and disproportionately harm voter participation by various groups, including racial minorities." Section 2(a)(3). To increase the opportunities to register, the Act generally requires that states establish a number of registration procedures, including mail-in registration. Under the terms of the Act, North Carolina is required to have these procedures in place for elections for Federal office by January 1, 1995.

The state contends that the proposed delay in implementing the mail-in procedure will not have a deleterious effect on the opportunity of minority residents to register to vote. Although the state agrees that in the long run the use of mail-in registration will increase voter registration, it contends that the 18-month delay is insignificant because there are other substantial registration opportunities, the delay is short, and there are costs associated with implementing mail-in registration before the date set for implementing it pursuant to the National Voter Registration Act.

Under the state's registration system, the minority registration rates continue to lag behind the white registration rate both in the state as a whole and in the covered counties. Indeed, we understand that the state originally adopted mail-in registration in large part because of the perceived need to

eliminate barriers to minority registration, and in that regard the North Carolina system does not currently provide all the registration opportunities contemplated by the National Voter Registration Act. In addition, we cannot view the 18-month delay as being insignificant given that it includes an entire election cycle -- the 1994 elections -- in which the state's congressional delegation, the entire state legislature, and many county offices will be up for election. In these circumstances, we cannot say that the state has met its burden of showing that the delay will not "lead to a retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise." Beer v. United States, 425 U.S. 130, 141 (1976).

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. See Georgia v. United States, 411 U.S. 526 (1973); see also 28 C.F.R. 51.52. In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that the state's burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the proposed delay in the implementation of the mail-in registration procedure.

We note that under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed change has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. In addition, you may request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the objected-to change continues to be legally unenforceable. Clark v. Roemer, 111 S. Ct. 2096 (1991); 28 C.F.R. 51.10 and 51.45.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the State of North Carolina plans to take concerning this matter. If you have any questions, you should call Special Section 5 Counsel Mark Posner, at (202) 307-1388.

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

February 14, 1994

Mr. James C. Drennan
Director
Administrative Office of the Courts
P. O. Box 2448
Raleigh, North Carolina 27602

Dear Mr. Drennan:

This refers to Chapter 321 (1993), which provides for the creation of an additional judicial district (District 9A) for the superior and district courts, and the associated redistricting of judicial districts; the establishment of eight additional superior court judgeships (in Districts 3B, 9A, 10A, 15A, 17B, 20B, 25B, and 27B); the establishment of eight additional district court judgeships in judicial districts that include one or more covered counties (Districts 1, 3A, 6B, 8, 12, 18, 20, and 30); the reallocation of district court judges among Districts 9, 9A, and 17A; the establishment of a district attorney position in District 9A; and the implementation schedules for the changes in the State of North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your responses to our request for additional information on December 14, 1993, and February 2, 4, and 8, 1994.

We have considered carefully the information you have provided, as well as information from other interested persons. Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. See Georgia v. United States, 411 U.S. 526 (1973); see also Procedures for the Administration of Section 5 (28 C.F.R. 51.52).

In addition, Section 5 preclearance must be withheld where a change presents a clear violation of the results standard of Section 2 of the Voting Rights Act, 42 U.S.C. 1973. 28 C.F.R. 51.55(b)(2). Where the submitted changes involve additional elective positions, those changes must be reviewed in light of the method by which the positions will be elected.

With these standards in mind, the Attorney General does not interpose any objection to the submitted changes, except for the establishment of additional district court judgeships in Districts 1, 3A, 8, 12, 18, and 20, and the implementation schedules therefor. However, we note that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the changes. In addition, as authorized by Section 5, we reserve the right to reexamine this submission if additional information that would otherwise require an objection comes to our attention during the remainder of the sixty-day review period. 28 C.F.R. 51.41 and 51.43.

The district court system was established in 1965 as a junior trial court partner to the superior court and the election system crafted at that time for the district court closely tracked the system then in effect for the superior court. The existing superior court judicial districts were used to define the election constituencies for district court elections and, as with the superior court, candidates for the district court were to run at large within these districts in partisan elections. The numbered position requirement which was adopted for superior court elections in 1965 was added to the district court election system in 1969. Subsequently, when additional judicial districts were created, they were created in tandem for both trial court systems. The only difference between the two election systems was the statewide election feature of superior court general elections.

In 1987, following the preclearance a year earlier of the establishment of the district court system, the state made significant changes to the election system for the superior court which are relevant to the instant review. The 1987 legislation altered the superior court election system enhancing substantially the opportunity of minority residents to elect candidates of their choice to that court. The legislation created eight districts that have black voting age population

majorities and a ninth district that has a combined black and Native American majority in voting age population. Two of these districts are composed of whole counties and seven were drawn by creating partial-county subdistricts. The legislation also allowed for minority voters to use the election technique of single-shot voting in certain multi-judge districts. These changes were adopted after the Attorney General interposed a Section 5 objection, on April 11, 1986, to the state's adoption of anti-single-shot provisions for superior court elections (the 1965 numbered position requirement and the use of staggered terms in certain multi-judge judicial districts). The legislation also followed the filing of a private suit challenging the superior court method of election under Section 2 of the Voting Rights Act.

It appears that in the seven years since these changes were adopted for the superior court, they generally have been recognized as having successfully enabled minority voters to gain a voice in the election of superior court judges while not hindering the ability of the superior court system fairly and impartially to administer justice. Whereas at the time the legislation was adopted only one black person had been elected to the superior court, currently 13 of the court's 82 judges are minorities (ten elected from the majority-minority districts).

In adopting these changes for the superior court, however, the state chose to partially sever the historic link between the election systems for the two trial courts. The two majority-minority superior court districts that were created by reallocating whole counties (Districts 6B and 16B) also have been established for district court elections. But the state has left unaltered for district court elections those districts from which majority-minority subdistricts were created for the superior court, and also has maintained the use of numbered positions and staggered terms in district court elections. This apparently has resulted in minority voters having substantially less opportunity to elect candidates of their choice to the district court. For example, while the district court has over twice as many judges as the superior court (180 to 82), the number of minorities currently serving on the district court is only one more than now serve on the superior court.

The state has set forth a number of reasons for declining to apply, except to a limited extent, the 1987 superior court changes to the district court. The state contends that at-large elections and anti-single-shot provisions insulate district court judges from undue influence at the polls from particular advocacy groups. The state also contends that the ability of district

court judges to impartially administer justice might be compromised if, by creating subdistricts in certain areas, some district court judges no longer both served in and were elected from the same geographic area; the concern, in this regard, is that a judge might be biased in favor of litigants who reside in his or her subdistrict. Further, the state asserts that the use of numbered positions and staggered terms assures that incumbent judges need not oppose each other for election, which in turn, the state asserts, promotes cooperation and collegiality among the district judge corps.

Each of these concerns, however, appears to be rebutted by the state's effective implementation of the 1987 changes to the superior court election system, or by the state's long standing system of rotating superior court judges outside the judicial districts in which historically they have been nominated. Furthermore, we note that information we have obtained about the adoption in 1969 of the numbered position requirement for district court elections suggests that, at least in part, it was invidiously motivated. In that regard, we note that numbered positions were generally regarded at that time as a means for limiting the opportunity of minority voters to effectively participate in state elections, and that this feature of the district court election system was added immediately following the election in 1968 of the first black member of the district court bench, in an election (in District 18) where black voters effectively made use of the single-shot device.

It is in this context that we have reviewed the eight district court judgeships which the state proposes to add to covered judicial districts. As stated above, two of the judgeships are being precleared in this determination letter; one is being added to black-majority District 6B, where black voters have a substantial electoral opportunity, and the other is being added to District 30, which is only 1 percent black in voting age population.

The other six districts range in voting age population between 18 percent and 33 percent black, and it appears that in these districts black voters have only a limited electoral opportunity. Our analysis indicates that elections in the counties that compose these districts are characterized by a pattern of polarized voting. Two of the districts, Districts 12 and 18, have been divided into subdistricts for superior court

elections. District 12, where the state proposes to elect seven district court judges, has three subdistricts, one of which is 46 percent black in voting age population but includes the generally nonvoting population of Fort Bragg. District 18, where the state proposes to elect eleven district court judges, is divided into five superior court subdistricts, one of which is 63 percent black in voting age population. Similarly, it appears that in Districts 1 (three proposed judges), 3A (four proposed judges), 8 (six proposed judges), and 20 (seven proposed judges), the black population may be sufficiently large and geographically compact to constitute a majority in a subdistrict. In addition, it appears that the electoral opportunity of black voters would be enhanced in these districts were the state to eliminate its anti-single-shot provisions (numbered positions and staggered terms).

In light of these considerations, I cannot conclude, as I must under the Voting Rights Act, that the state has made the necessary showing under Section 5. Therefore, while we do not in any way question the state's need for establishing additional district court judgeships, I must, on behalf of the Attorney General, object to the additional judgeships for Districts 1, 3A, 8, 12, 18, and 20 in the context of the existing at-large election system.

With respect to the implementation schedules for these judgeships, the Attorney General will make no determination since these changes are directly related to the establishment of the judgeships. 28 C.F.R. 51.35.

We note that under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the objected-to changes have neither the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. In addition, you may request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the objected-to changes continue to be legally unenforceable. Clark v. Roemer, 111 S. Ct. 2096 (1991); 28 C.F.R. 51.10 and 51.45.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the State of North Carolina plans to take concerning this matter. If you have any questions, you should call Special Section 5 Counsel Mark Posner, at (202) 307-1388.

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

U.S. Department of Justice
Civil Rights Division

Office of the Assistant Attorney General Washington, D.C. 20530

APR 25 1994

Michael Crowell, Esq.
Tharrington, Smith & Hargrove
P. O. Box 1151
Raleigh, North Carolina 27602-1151

Dear Mr. Crowell:

This refers to the annexation (Ordinance No. 0-1994-01) to the City of Laurinburg in Scotland County, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your submission on February 23, 1994.

We have considered carefully the information that you have provided, as well as Census data and comments and information from other interested persons. According to the 1990 Census, the city's total population consists of 11,643 persons of whom 5,218 (44.8 percent) are black. Black voters constitute 39.1 percent of the voting age population. The proposed annexation adds approximately 4,109 persons as city residents, only 800 of whom (19.5 percent) are black. Thus, the addition of this area to the city would decrease the black share of the city's population by 6.5 percentage points, from 44.8 percent to 38.3 percent. The black share of the city's voting age population would decrease from 39.1 percent to 32.6 percent.

The city elects its five-member city council at large to staggered terms with a plurality vote requirement. Our analysis of municipal elections reveals an apparent pattern of racially polarized voting that has limited the ability of black voters to elect their preferred candidates. Thus, in this context, the reduction in the black share of the city's population as effectuated by the proposed annexation would further limit the opportunity of black voters to elect their candidates of choice to the city council.

You have represented in your submission that the city intends to ameliorate the impact of this annexation on black voting strength by changing its existing method of election to include a districting plan from which black voters will have greater opportunities to elect their preferred candidates than at present. We understand, however, that any change in method of electing the city council is subject to state legislative approval and that the city has not yet obtained authorization to adopt such a change. Accordingly, the only system under which we can analyze the submitted annexation is the existing, at-large, electoral system..

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that submitted changes have neither a discriminatory purpose nor a discriminatory effect. Georgia v. United States, 411 U.S. 526 (1973); see also 28 C.F.R. 51.52. Annexations that result, as here, in a significant decrease in the minority proportion of a city's population have such a proscribed effect, and, therefore, may satisfy Section 5 only if the method used for electing the city's governing body "fairly reflects the strength of the [minority] community as it exists after the annexation." City of Richmond v. United States, 422 U.S. 358, 370-71 (1975). In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that the city's burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the proposed annexation occasioned by the City of Laurinburg's adoption of Ordinance Number O-1994-01.

We note that under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed annexation will have neither the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. In addition, you may request that the Attorney General reconsider the objection. In this regard, should the city change its method of election and adopt a new system that comports with the legal standards set forth in City of Richmond v. United States, supra, we would be willing to reconsider this objection at the time that Section 5 preclearance is sought for that change and any related districting proposal. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the proposed annexation continues to be legally unenforceable insofar as it affects voting. See Dotson v. City of Indianola, 514 F. Supp. 397, 403 (N.D. Miss. 1981 (three-judge court) (municipal residents of areas annexed after Section 5 coverage date may not participate in municipal elections unless and until the annexations receive Section 5 preclearance). See also Clark v. Roemer, 111 S.Ct. 2096 (1991); 28 C.F.R. 51.10 and 51.45.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the City of Laurinburg plans to take concerning this matter. If you have any questions, you should call Ms. Delora L. Kennebrew (202-307-3718), a Deputy Chief in the Voting Section.

Sincerely,

Deval L. Patrick
Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

JUN 23 1994

Michael Crowell, Esq.
Tharrington, Smith & Hargrove
P. O. Box 1151
Raleigh, North Carolina 27602-1151

Dear Mr. Crowell:

This refers to the change in the method of electing city councilmembers from at large to two double-member districts and one at large, the districting plan and an implementation schedule for the City of Laurinburg in Scotland County, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your submission on May 17, 1994.

This also refers to your request that the Attorney General reconsider and withdraw the April 25, 1994, objection under Section 5 to the city's adoption of an annexation (Ordinance No. 0-1994-01). We received your request on May 17, 1994.

As noted in our objection letter, the annexation would reduce significantly the black proportion of the city's total population. Our analysis showed that, in the context of racially polarized voting, the existing at-large method of election for the city council would not fairly reflect black voting strength in the expanded city, and accordingly, an objection was interposed. See City of Richmond v. United States, 422 U.S. 358 (1975).

Under the proposed election system, city councilmembers would be elected from two double-member districts, one of which has a black population of 62.9 percent. Our analysis shows that this system would fairly recognize black voting strength in the expanded city and therefore resolves our Section 5 concerns.

Accordingly, I hereby withdraw the objection to the annexation identified by Ordinance No. 0-1994-01 and interpose no objection to the change in method of election, districting plan and implementation schedule. However, we note that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the changes. In addition, as authorized by Section 5, we reserve the right to reexamine this submission if additional information that would otherwise require an objection comes to our attention during the remainder of the sixty-day review period. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41 and 51.43).

Since the Section 5 status of the proposed annexation is at issue in Speller v. City of Laurinburg, No. 3:93 CV 365, we are providing a copy of this letter to the court and counsel of record in that case.

Sincerely,

Deval L. Patrick
Assistant Attorney General
Civil Rights Division

cc: Honorable William L. Osteen, Jr.
United States District Judge

Counsel of Record

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

September 13, 1994

William Sam Byassee, Esq.
Smith, Helms, Mulliss & Moore
P. O. Box 21927
Greensboro, North Carolina 27420

Dear Mr. Byassee:

This refers to the increase in number of commissioners from five to six, the change in method of election from at large to four single-member districts and two at large (with no numbered positions), and the districting plan for the Town of Mt. Olive in Wayne County, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your responses to our request for additional information on July 15 and August 31, 1994.

We have considered carefully the information you have provided as well as information from other interested persons. According to the 1990 Census, the population of Mt. Olive (including several post-1990 annexations) is approximately 4,700, of whom about 53 percent are black. About 49 percent of the town's voting age population is black and currently blacks constitute 45 percent of the town's registered voters. The town is governed by a mayor and a five-member board of commissioners elected at large, by plurality vote, to two-year concurrent terms. The commissioners are elected without designated posts which permits the use of the election device of single-shot voting.

Despite the town's substantial minority population and numerous black candidacies, there has never been more than one black elected to the board of commissioners at any one time. This appears to be the result of a pattern of racially polarized voting. This election history led representatives of the black community to file suit in May 1993 under Section 2 of the Voting Rights Act, 42 U.S.C. 1973, challenging the at-large method of election. Fussell v. Town of Mount Olive, C.A. No. 93-303-CIV-5-D (E.D.N.C.).

The filing of the Section 2 suit impelled the town to adopt a new method of election, however, the town chose to adopt the system now submitted for Section 5 review over the strenuous opposition of the Section 2 plaintiffs and the black community in general. Particular concern was raised regarding the opportunity of black voters to elect their preferred candidate to either of the at-large seats (as well as concerning the unnecessary "packing" of black population in a 97 percent black district). Our analysis suggests that given the presence of polarized voting and the limited success that black voters have enjoyed when five at-large seats are elected, there is considerable doubt as to whether black voters would have a significant opportunity to elect any at-large member under the proposed election method.

The board of commissioners proposed the instant election plan in September 1993, after the Section 2 plaintiffs agreed in July 1993 to the board's proposal to settle the lawsuit by adopting a plan of four single-member districts and one at-large seat. The change in the board's position followed an August public hearing in which black residents unanimously supported the adoption of a district method of election while several white leaders opposed altering the at-large system. Subsequently, in November 1993, when one of the black plaintiffs was elected to the board (as its only black member), the board petitioned the Section 2 court to prohibit her from participating in board discussions or voting on the method of election issues raised by the Section 2 litigation. The court denied the board's request.

The board asserts that it shifted to the proposed 4-2 approach in order to encourage voter participation. However, the board has not provided any explanation as to why adding just one additional at-large seat would yield a measurable difference in voter participation. Similarly, it has not provided any concrete explanation as to why this consideration was not a factor when it entered into the July 1993 agreement with plaintiffs or how it came to conclude between July and September 1993 that this consideration was of such weight that it justified withdrawing from the agreement with the plaintiffs. In these circumstances, the board has not offered any convincing nonracial explanation for its adoption of the proposed 4-2 plan.

Under Section 5 of the Voting Rights Act, the town has the burden of showing that the submitted changes have neither a discriminatory purpose nor a discriminatory effect. Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.52). In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that the town's burden has been sustained in this instance with regard to the proposed method of election. Therefore, on behalf of the Attorney General, I must object to the four district, two at-large method of election, including the proposed increase from five to six commissioners.

With regard to the districting plan, since this change is directly related to the unprecleared method of election, the Attorney General will make no determination with respect to this matter.

We note that under Section 5 the Town of Mt. Olive has the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the objected-to changes have neither the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. In addition, the town may request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the objected-to changes continue to be legally unenforceable. Clark v. Roemer, 500 U.S. 646 (1991); 28 C.F.R. 51.10 and 51.45.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the Town of Mt. Olive plans to take concerning this matter. If you have any questions, you should call Special Section 5 Counsel Mark A. Posner, at (202) 307-1388.

Sincerely,

Deval L. Patrick
Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

MAY 30 1995

Mr. James C. Drennan
Director
Administrative Office of the Courts
P. O. Box 2448
Raleigh, North Carolina 27602

Dear Mr. Drennan:

This refers to the request that the Attorney General reconsider and withdraw the February 14, 1994, objection interposed under Section 5 of the Voting Rights Act, 42 U.S.C. 1973c, to Chapter 321 (1993) insofar as that legislation provides for the establishment of an additional district court judgeship in judicial District 1 in the State of North Carolina. We received your request on March 28, 1995; supplemental information was received on May 23, 1995.

The state's request is based on the election in November 1994 of the Honorable J.C. Cole, a black individual, to an existing district court position in this district. Judge Cole succeeded his wife, the Honorable Janice Cole, who stepped down from the bench in 1994 to become United States Attorney for the Eastern District of North Carolina.

District 1 covers seven counties in the northeastern portion of the state and, according to the 1990 Census, is 25 percent black in voting age population. The judgeship created by Chapter 321 would be the district's fourth. We have carefully considered the election of Judge Cole in 1994, as well as the election of Ms. Cole in 1990, other information in our files, and comments from interested persons. Based on this review, we conclude that the establishment of the fourth District 1 judgeship satisfies the Section 5 preclearance standards. Accordingly, pursuant to Section 51.48(b) of the Procedures for the Administration of Section 5 (28 C.F.R.), the objection interposed to this change is hereby withdrawn. In addition, the Attorney General does not

interpose any objection to the schedule for implementing this change. However, we note that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of these changes. See 28 C.F.R. 51.41.

Sincerely,

Deval L. Patrick
Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

JAN 11 1996

The Honorable Jack Cozort
Acting Director
Administrative Office of
the Courts
P.O. Box 2448
Raleigh, North Carolina 27602

Dear Judge Cozort:

This refers to your request that the Attorney General reconsider and withdraw the February 14, 1994, objection interposed under Section 5 of the Voting Rights Act, 42 U.S.C. 1973c, to Chapter 321 (1993), insofar as that legislation provides for the establishment of an additional judgeship in North Carolina District Court Districts 3A, 8, 12, 18 and 20. We received your request on November 7, 1995; supplemental information was received on December 20, 1995, and January 3, 1996.

We have reconsidered our earlier determination in this matter based on the information and arguments you have advanced in support of your request, along with the other information in our files and comments received from other interested persons. Accordingly, pursuant to Section 51.48(b) of the Procedures for the Administration of Section 5 (28 C.F.R.), the objection interposed to Chapter 321 (1993), insofar as that legislation provides for the establishment of an additional judgeship in North Carolina District Court Districts 3A, 8, 12, 18 and 20, is hereby withdrawn. However, we note that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the changes. See 28 C.F.R. 51.41.

Sincerely,

Loretta King

for Deval L. Patrick
Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

February 13, 1996

Charles M. Hensey, Esq.
Special Deputy Attorney General
P.O. Box 629
Raleigh, North Carolina 27602-0629

Dear Mr. Hensey:

This refers to Chapter 355 (1995), which prohibits state legislative and Congressional district boundaries from crossing voting precinct lines unless the districts are found in violation of Section 5 of the Voting Rights Act, for the State of North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your responses to our November 13, 1995, request for additional information on December 15, 1995, and February 8, 1996.

We have considered carefully the information provided in this submission and in the State's submissions of its 1991 and 1992 Congressional, State House, and State Senate redistricting plans, as well as Census data and information and comments received from other interested persons. As you know, we interposed Section 5 objections to the 1991 Congressional, State House, and State Senate redistricting plans.

When we objected to the 1991 redistricting plans, we explained that the choices made by the legislature resulted in boundary line configurations that did not fairly recognize minority voting strength. In the context of the apparent pattern of racially polarized voting in some areas of North Carolina, the fact that minority population concentrations in those areas were

submerged in majority white areas meant that minority voters would not have an equal opportunity to elect candidates of choice. We noted that alternative redistricting plans were available which would have fairly recognized minority voting strength. These alternatives had been rejected, at least in part, because they violated the established criterion of splitting as few precincts as possible. The redistricting plans adopted by the legislature in 1992 split precincts, in part, to fairly recognize black voting strength. They received Section 5 preclearance.

Under existing state law, county election officials may use their discretion with regard to the population size and racial composition of the precincts. Until now, in the context of redistricting, the size and composition of the precincts were of little relevance because the legislature could draw district lines through the precinct lines for any number of reasons (e.g. to protect incumbents, to voluntarily satisfy the Voting Rights Act, etc). However, under the proposed legislation, the size and composition of the precincts takes on new importance. Because precincts must be contained in their entirety within a single district, they will be used as the building blocks for each district. If precincts do not fairly reflect minority voting strength, it is virtually impossible for the districts to do so.

We note that the proposed legislation provides that "[t]his section does not prevent the General Assembly from taking any action to comply with federal law. . . ." This language was adopted to allay the concerns expressed by black legislators and others that Chapter 355 would have a retrogressive effect on minority voters. Although this language could conceivably mitigate against such a potentially retrogressive effect, the State has failed to articulate the meaning, scope, and priority this language will receive and the guidelines that will be used in its implementation. As a result, we can only conclude that the legislature will have complete discretion concerning the interpretation of what action is "necessary to comply with federal law" and that interpretation may or may not include the Voting Rights Act and may change depending upon the particular composition of the legislature.

We also note that because many of the same legislators who were involved in or were aware of the issues in the post-1990 Census redistricting process were also involved in the adoption of the proposed legislation, it is likely that they were aware of the potentially retrogressive effect of Chapter 355. In fact, after the first version of Chapter 355 passed, several minority legislators specifically reminded their fellow legislators that the precincts were split during the post-1990 Census redistricting process to satisfy the requirements of the Voting Rights Act. The language that was added to the legislation to

allay the concerns raised by minority legislators and others appears to be intentionally vague and does not specifically make reference to the requirements of the Voting Rights Act and the need to satisfy those requirements in the redistricting process. Finally, the fact that the legislature added this language suggests that the legislators were cognizant that the proposed legislation may not satisfy the requirements of the Voting Rights Act.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. Georgia v. United States, 411 U.S. 526 (1973); Procedures for the Administration of Section 5, 28 C.F.R. 51.52. The existence of some legitimate, nondiscriminatory reasons for the voting change does not satisfy this burden. See Village of Arlington Heights v. Metropolitan Housing Development Corp., 429 U.S. 252, 265-66 (1977); City of Rome v. United States, 446 U.S. 156, 172 (1980); Busbee v. Smith, 549 F. Supp. 494, 516-17 (D.D.C. 1982), aff'd, 459 U.S. 1166 (1983). In view of the legislature's experiences during the post-1990 Census redistricting process and the decisions and events that occurred during the instant process, it is virtually impossible to conclude that the legislators were unaware of the potentially retrogressive effect of Chapter 355. As result, we cannot conclude that State has met its burden of proving that the adoption of Chapter 355 was free from a racially discriminatory purpose.

In addition, because Chapter 355 unnecessarily restricts the redistricting process and makes it more difficult to maintain existing majority black districts and to create new ones, the State has not met its burden of showing that Chapter 355 will not "lead to a retrogression in the position of . . . minorities with respect to their effective exercise of the electoral franchise." Beer v. United States, 425 U.S. 130, 141 (1976).

In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that your burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to Chapter 355.

We note that under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed change has neither a discriminatory purpose nor effect. 28 C.F.R. 51.44. In addition, you may request that the Attorney General reconsider the objection. See 28 C.F.R. 51.45. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, Chapter 355 continues to be legally unenforceable. See Clark v. Roemer, 500 U.S. 646 (1991); 28 C.F.R. 51.10.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the State of North Carolina plans to take concerning this matter. If you have any questions, you should call Colleen M. Kane (202-514-6336), an attorney in the Voting Section.

Sincerely,

Loretta King

Loretta King
Acting Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

February 3, 1997

Susan K. Nichols, Esq.
Special Deputy Attorney General
P.O. Box 629
Raleigh, North Carolina 27602-0629

Dear Ms. Nichols:

This refers to Chapter 667 (1996), which creates the Butner Advisory Council for the Camp Butner Reservation, consisting of seven members, elected at large to four-year, staggered terms in nonpartisan elections, and designates the implementation schedule, the candidate filing period, the general election date, and the method of selecting the chair of the council for the reservation located partly in Granville County, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your response to our September 30, 1996, request for additional information on December 3, 1996; supplemental information was received on January 16, 1997.

We have carefully considered the information that you have provided, as well as Census data and information from other interested persons. As a result, the Attorney General does not interpose any objection to the creation of the Camp Butner Reservation, the establishment of the elected Advisory Council, the number of officials, the term of office, the adoption of nonpartisan elections, the candidate filing period, the general election date, and the method of selecting the chair of the council. However, we note that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the changes. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41).

We cannot reach the same conclusion, however, regarding the proposed at-large method of election and the use of staggered terms in that context. According to 1990 Census data and the submitted map of the area, the population of the Camp Butner Reservation (hereinafter "the reservation") includes approximately 6,472 persons, of whom 2,471 (38.2 percent) are black. As of November 1996, the reservation has 2,063 registered voters, of whom 700 (33.9 percent) are black. Most of the reservation's population is located in Granville County, North Carolina. The reservation's councilmembers will be elected at large to staggered (4-3) terms.

As of 1987 no black candidate had ever been elected to the at-large elected Granville County Commission or School Board, despite the fact that the black percentage of the county's total population had grown to 43 percent and multiple black candidates had run for office. Private plaintiffs sued the county commission alleging vote dilution, McGhee v. Granville County, Civil Action No. 87-29-CIV-5 (E.D.N.C.), and three months later, the United States Department of Justice sued the county school board, United States v. Granville County Board of Education, No. 87-353-CIV-5 (E.D.N.C.). Both lawsuits were filed on the premise that the at-large method of election for the respective governing bodies did not provide black voters with an equal opportunity to elect candidates of choice. In response to each lawsuit, the county entered into consent agreements, with private plaintiffs as to the county commission and with the Department as to the school board, which included stipulations that the at-large method of election violated Section 2 of the Voting Rights Act; ultimately, single-member districts were implemented to cure the violations.

Implicit in these stipulations that the at-large method of election violates Section 2 was an admission that voting in the county was racially polarized. Our analysis of at-large elections for county offices since this time indicates that the pattern of racially polarized voting has not changed. While black-supported candidates have had some limited success in at-large and double-member district elections for state offices, they continue to be plagued by defeat in more local elections conducted on a countywide basis.

Despite this well-documented pattern of racially polarized voting for at-large elected county offices, an election system was selected for the reservation's Advisory Council that has impeded the ability of black voters to elect their candidates of choice. Alternative election systems, such as single-member

districts, that would allow black voters an equal opportunity to participate in the electoral process and to elect candidates of their choice do not appear to have been given serious consideration in the decision-making process. Our analysis revealed that it is relatively simple, for example, to create a seven single-member district plan with two naturally occurring, compact districts that have black voting age population majorities.

The election of a single black candidate in an unprecleared election for the Advisory Council conducted in November 1996 in which all seven council positions were elected and the number of candidates was double the number of positions to be filled does not compel a different conclusion regarding the impact of an at-large election system on the opportunity of minority voters to elect their candidates of choice. Nor is this election sufficient to counter the well established pattern of racially polarized voting observed in county elections conducted on a countywide basis or to allow us to conclude that an at-large election system with staggered terms (4-3) will enable black voters to elect candidates of choice in future Advisory Council elections.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. See Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.52). In addition, an objection must be interposed where there is a clear violation of Section 2 of the Voting Rights Act, 42 U.S.C. 1973; see also 28 C.F.R. 51.55(b)(2). In light of the considerations discussed above, I cannot conclude as I must under the Voting Rights Act, that your burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the at-large method of election and staggered terms for the Camp Butner Reservation.

We note under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the at-large method of election and staggered terms have neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color or membership in a language minority group. In addition, you may request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the at-large method of election and staggered terms continue to be legally unenforceable. Clark v. Roemer, 500 U.S. 646 (1991); 28 C.F.R. 51.10 and 51.45.

The Attorney General will make no determination with regard to the implementation schedule as it is directly related to the objected-to staggered terms. See 28 C.F.R. 51.22(b).

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the action the State of North Carolina plans to take concerning this matter. If you have any questions, you should call Ms. Colleen Kane-Dabu (213-894-2931), an attorney in the Voting Section.

Sincerely,

Isabelle Katz Pinzler
Acting Assistant Attorney General
Civil Rights Division

U. S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

JUL 23 2002

Dwight W. Snow, Esquire
Post Office Box 397
Dunn, North Carolina 28335

Duncan B. McCormick, Esquire
Post Office Box 1629
Lillington, North Carolina 27546

Dear Messrs. Snow and McCormick:

This refers to the 2001 redistricting plans for the board of commissioners and board of education in Harnett County, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your initial response to our May 14, 2002, follow-up request for additional information on May 24, 2002; supplemental information was received through July 16, 2002.

We have carefully considered the information you have provided, as well as information in our files, Census data, and information and comments from other interested persons. In light of the considerations discussed below, I cannot conclude that your burden under Section 5 of the Voting Rights Act has been sustained in this instance. Therefore, on behalf of the Attorney General, I am compelled to object to the county's 2001 redistricting plan.

According to the 2000 Census, black persons represent 22.6 percent of the county's total population and 20.7 percent of its voting age population. The county's current method of electing the five members of both the board of commissioners and board of education from five single-member districts resulted from a 1989 consent decree entered in Porter v. Stewart, No. 89-950 (E.D.N.C.), which alleged that the county's then-existing at-large methods of election violated Section 2 of the Voting Rights Act. Under the plans used by the county since 1989, black persons constituted a majority of both the total and the voting age population in one of the five districts, District 1. According to your submission, under 2000 Census data, District 1 in the 1992 plan is 52.7 percent black in total population and

50.8 percent black in voting age population and is underpopulated by 20.4 percent. This plan serves as the benchmark for our analysis.

In contrast to the benchmark plan, the proposed 2001 redistricting plan contains no district in which black persons are a majority, in either total or voting age population. According to the information you provided, the black population percentage of the total population in proposed District 1 drops six percentage points to 46.6 percent, and the voting age population by seven points to 43.9 percent. For the reasons set forth below, we believe that, within the context of electoral behavior in the county and the availability of alternative redistricting plans, the county has not established that this reduction will not result in a retrogression in the ability of minority voters to exercise their electoral franchise.

The election returns provided by the county suggest that since 1990 the candidates elected in District 1 to both boards have received strong cohesive support from black voters as well as support from white voters. The county has held elections in 1990, 1994, and 1998 in District 1; each of these elections resulted in black candidates being elected to both boards from District 1. Our review also shows that some interracial elections were closely contested. For example, in 1990 and 1994, two of the three years in which the District 1 seat for the board of commissioners was up for election, a black candidate won the Democratic primary election with 54 to 55 percent of the vote, at a time when District 1 was roughly 54 percent black in voting age population. As a result, the proposed seven point reduction in the black voting age percentage in District 1 casts significant doubt as to whether, in similar, closely-contested elections over the next decade, black voters would retain the same electoral ability that they do in the benchmark plan, particularly if the current incumbents in District 1 decline to run again for office.

Moreover, during the redistricting process neither board considered any redistricting plan in which black persons would remain a majority of either the total or voting age populations in District 1. We understand that counsel for the Porter plaintiffs, however, subsequently provided county officials with two alternative plans. In the second of these plans, blacks persons remain a majority of both the total and voting age populations, while also complying with one-person, one-vote requirements and other constitutional restrictions. That plan also maintains all present incumbents in their districts, is not dramatically different from the existing plan, and appears to be less unusual in overall design than the proposed plan.

In short, the retrogression in proposed District 1 was not unavoidable. Our review of the county's benchmark and proposed plans, as well as the alternative plans provided by the Porter plaintiffs, suggests that the significant reduction in black voting age population percentage in District 1 in the proposed plan, and the likely resulting retrogressive effect on the ability of black voters to elect candidates of choice, was neither inevitable nor was it required by any constitutional or legal imperative. In saying this we recognize that, in revising the benchmark plan to bring it into compliance with the one-person, one-vote requirement, the county took steps to mitigate the reduction in black percentage in District 1, such as including the Campbell University area in the district, and leaving the district relatively underpopulated as redrawn.

We believe that alternative redistricting approaches available to the county would not result in any retrogression in black voting strength, or occasion a significant conflict with the county's redistricting goals as they have been presented to us in your submission, or as they are reflected in the county's existing redistricting plan. Further, should the county believe that such an altered plan conflicts with the county's redistricting goals, we note that "compliance with Section 5 of the Voting Rights Act may require the jurisdiction to depart from strict adherence to certain of its redistricting criteria." Guidance Concerning Redistricting and Retrogression Under Section 5 of the Voting Rights Act, 66 Fed. Reg. 5412 (Jan. 18, 2001).

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.52). In light of the considerations discussed above, I cannot conclude that your burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I am compelled to object to the 2001 redistricting plan.

We note that under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed change neither has the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. See 28 C.F.R. 51.44. In addition, you may request that the Attorney General reconsider the objection. See 28 C.F.R. 51.45. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained,

the submitted plan continues to be legally unenforceable. Clark v. Roemer, 500 U.S. 646 (1991); 28 C.F.R. 51.10.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action Harnett County plans to take concerning this matter. If you have any questions, you should call Chris Herren (202-514-1416), an attorney in the Voting Section.

Sincerely,

J. Michael Wiggins
Acting Assistant Attorney General

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

18 NOV 1981

Honorable Daniel R. McLeod
Attorney General
Wade Hampton Office Building
Post Office Box 11549
Columbia, South Carolina 29211

Dear Mr. McLeod:

This is in reference to Act No. R249 (1981), providing for the reapportionment of the South Carolina House of Representatives. Your submission, pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c, was received on September 19, 1981, and supplemented thereafter with additional materials forwarded to us by Mr. Robert J. Sheheen, Chairman of the House Judiciary Committee.

We have given careful consideration to all of the forwarded materials, as well as other information available to us. The submitted reapportionment includes 124 single-member districts, the overwhelming majority of which are unobjectionable. We are, however, unable at this time to preclear the reapportionment plan since there are a limited number of districts which fail to satisfy the requirement under the Act that they be drawn in a manner that does not have a discriminatory effect.

Under Section 5, the State bears the burden of proving the absence of both discriminatory purpose and effect in the proposed House redistricting plan. City of Rome v. United States, 446 U.S. 156, 183 n.18 (1980); Beer v. United States, 425 U.S. 130, 140-41 (1976). In order to prove the absence of a racially discriminatory effect, the State of South Carolina must demonstrate, at a minimum, that the proposed House redistricting plan will not lead to "a retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise." Beer v. United States, supra, 425 U.S. at 141. While the State is

under no obligation to maximize minority voting strength, the State must demonstrate that the plan "fairly reflects the strength of [minority] voting power as it exists." Mississippi v. United States, 490 F. Supp. 569, 581 (D.D.C. 1979), citing Beer v. United States, supra, 425 U.S. at 139 n.11 and 141; and City of Richmond v. United States, 422 U.S. 358, 362 (1975).

On the basis of our review of the proposed reapportionment plan we find certain districts drawn in a manner that "would lead to a retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise." Beer v. United States, supra, 425 U.S. at 141. In this regard, we have carefully analyzed the submitted plan in comparison to the prior reapportionment plan as drawn in 1974. In examining the "old" plan, we have, as the law requires, viewed the districts "from the perspective of the most current available population data," City of Rome v. United States, supra, 446 U.S. at 186 (i.e., the 1980 census data). On that basis, we have found noticeable dilution or fragmentation of the minority vote in Florence County (Proposed District Nos. 59, 62, 63), Richland County (Proposed District Nos. 70, 72, 73, 74, 75, 76, 79), Lee County (Proposed District Nos. 50, 65, 66), Allendale-Bamberg-Barnwell Counties (Proposed District Nos. 90, 91), and Jasper-Beaufort Counties (Proposed District No. 122).

We are aware that alternate proposals were presented which would have avoided the fragmentation and dilution of minority voting strength in each of the referenced areas, and we have received complaints alleging that such alternate proposals were rejected for racially discriminatory reasons. Our own review has revealed that reasonably available alternative plans for each of these districts could be drawn which would avoid the fragmentation and dilution of minority voting strength and the State's submission offers no satisfactory explanation for, or governmental interest in, the rejection of such alternatives. In these circumstances, and in light of the existing patterns of racial bloc voting in South Carolina and the current underrepresentation of blacks in the South Carolina House of Representatives, we are unable to conclude that the State has met its burden of proving that the plan, at least as it affects the referenced areas, meets the requirements of the Act.

Since I am unable to conclude that Act No. R249 (1981) providing for the reapportionment of the South Carolina House of Representatives was enacted by the Legislature without a racially discriminatory purpose or effect, I must, on behalf of the Attorney General, interpose an objection to Act No. R249 pursuant to Section 5 of the Voting Rights Act of 1965.

Of course, as provided by Section 5 of the Voting Rights Act, you may seek a declaratory judgment from the United States District Court for the District of Columbia that the House reapportionment plan does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color. In addition, the Procedures for the Administration of Section 5 (Sec. 51.44, 46 Fed. Reg. 878) permit you to request the Attorney General to reconsider the objection. Until the objection is withdrawn or unless a declaratory judgment from the District Court for the District of Columbia is obtained, the effect of the Attorney General's objection is to render the reapportionment of the South Carolina House of Representatives legally unenforceable.

If you have any questions concerning this letter, please feel free to call Carl W. Gabel (202-724-7439) Director of the Section 5 Unit in our Voting Section. You can be assured that we are prepared to assist you in any way possible in connection with your reapportionment efforts.

Sincerely,

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

25 FEB 1982

Honorable Robert J. Sheheen
Chairman, Judiciary Committee
South Carolina House of Representatives
P. O. Box 11867
Columbia, South Carolina 29211

Dear Mr. Sheheen:

This is in reference to your request that the Attorney General reconsider his November 18, 1981 objection under Section 5 of the Voting Rights Act of 1965, 42 U.S.C. 1973c, to the redistricting of the South Carolina House of Representatives. Your request was originally received on December 8, 1981, and was supplemented with additional information received on January 4, 1982.

We have carefully reviewed the information you have provided to us, as well as comments and information provided by other interested parties. With the exception of the Allendale, Bamberg, and Barnwell counties area, we have not found a basis for the withdrawal of the Attorney General's objection. Therefore, on behalf of the Attorney General, I must decline to withdraw the objection to the other parts of the House redistricting plan to which an objection was interposed on November 18, 1981.

In the Allendale, Bamberg, and Barnwell counties area, our analysis of the redistricting plan shows that the State's plan would result in a two percent increase in black population percentage (from 56% to 58%) in the majority black district in this area. Although Allendale County's black voters have successfully elected a significant number of candidates to public office at the local level, we have no information that the black community in Allendale County has ever elected the candidate of its choice to the State House of Representatives. Moreover, black voters in Bamberg County have also elected candidates to local offices in that county, and it would appear that the House plan in that area would fairly recognize the potential of black voters in Bamberg County to elect the candidate of its choice from that district. Accordingly, our objection to that portion of the House redistricting plan affecting the Allendale, Bamberg, and Barnwell counties area, is hereby withdrawn.

cc: Public File

As you know, over the past several months, attorneys in this Division have met with you and other representatives of the State to discuss proposed modifications to the House reapportionment plan. While we have been unable to give you any type of commitment on these proposals during our discussions, we hope our comments were useful to you.

It is our understanding that there are a number of proposed modifications to the House redistricting plan pending before the Legislature. It would appear that some of those changes, if enacted by the Legislature, might well remedy the objectionable features in the House plan. If you would provide us with the population data underlying these changes, including voting age population and registered voters by race in the newly-drawn districts, we will react to such proposals as quickly as possible. We are mindful of the candidate qualification period (March 15-31) that is rapidly approaching. To facilitate our consideration of any possible modifications in the House plan, I have asked Mr. Gerald W. Jones, Chief of our Voting Section, as well as members of his staff, to be prepared to discuss the specifics of any proposed changes and to give you our immediate but tentative reaction to them. If you wish, we will give you a written confirmation of our reactions, if that would expedite the legislative process.

We trust this arrangement will be satisfactory to you. You can be assured we will assist you in any way possible.

Sincerely,

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

August 2, 1982

Roy D. Bates, Esq.
City Attorney
Post Office Box 147
Columbia, South Carolina 29217

Dear Mr. Bates:

This is in reference to the redistricting for the City of Columbia in Richland County, South Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. Your submission of supplemental information was received on June 3, 1982.

In order to complete the submission by the City of Columbia, on May 10, 1982, we requested certain additional information which, in our view was necessary for the required analysis. Included in the request was certain information concerning the alternate plans considered by the city council. This information is needed to enable us to evaluate the submission of a redistricting plan properly. Wilkes County, Georgia v. United States, 450 F. Supp. 1171 (D. D.C. April 20, 1978), aff'd, 439 U.S. 949 (1978). I note that in your letter of May 27, 1982, you declined to forward this information because "[w]e do not consider statistics for other plans relevant to this submission."

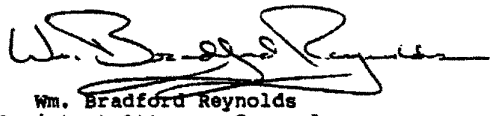
Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has no discriminatory purpose or effect. See, e.g., Georgia v. United States, 411 U.S. 526 (1973); see also, Procedures for the Administration of Section 5, 28 C.F.R. 51.39(e). In this case, we have not been presented with information sufficient to enable us to conclude that the plan meets the statutory standards. I also point out that Section 51.38 of the Procedures for the Administration of Section 5 provides that

if the submitting authority has not provided information in response to a request by the Attorney General, the Attorney General, consistent with the burden of proof imposed under Section 5, may object to the change. Therefore, on behalf of the Attorney General, I must object to the redistricting plan for the City of Columbia.

Of course, as provided by Section 5 of the Voting Rights Act you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that these changes have neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color or membership in a language minority group. In addition, the Procedures for the Administration of Section 5 (28 C.F.R. 51.44) permit you to request the Attorney General to reconsider the objection, which he will readily do upon receipt of the information not yet provided. However, until the objection is withdrawn or the judgment from the District of Columbia Court is obtained, the effect of the objection by the Attorney General is to make the redistricting plan legally unenforceable. See also 28 C.F.R. 51.9.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action the City of Columbia plans to take with respect to this matter. If you have any questions concerning this letter, please feel free to call Carl W. Gabel (202-724-8388), Director of the Section 5 Unit of the Voting Section.

Sincerely,



Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

16 AUG 1982

William H. Seals, Esq.
Marion County Attorney
P. O. Box 1041
Marion, South Carolina 29571-1041

Dear Mr. Seals:

This is in reference to the redistricting of county council manic districts (Act No. R345 (1982)) in Marion County, South Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. Your submission of supplemental information was received on June 16, 1982.

We have given careful consideration to the information you have supplied as well as that available from our files, the Bureau of the Census and other interested parties. At the outset, we note that the information submitted is not sufficient to show that the plan is not racially discriminatory. Figures showing the current population for the existing districts (e.g., under the 1980 Census) have not been provided. In a July 27, 1982, telephone conversation with Samuel D. Reyes of our staff, County Administrator Beeson indicated that this information was not available because Census Enumeration Districts were not split.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of proving that a submitted change has no discriminatory purpose or effect. See Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.38). In failing to provide the aforementioned information you have failed to sustain your burden of showing that the proposed reapportionment plan is not retrogressive under Beer v. United States, 425 U.S. 130 (1976).

Since comparison with the existing plan is not possible, in our view the effect of the proposed plan on black voting strength under Beer must be measured against "properly apportioned single-member district plans." Wilkes County, Georgia v. United States, 450 F. Supp. 1171, 1178 (D. D.C.), aff'd, 439 U.S. 999 (1978). Our analysis reveals that under the proposed plan, and in the context of racial bloc voting that seems to exist in Marion County, blacks are likely to be able to elect representatives of their choice to the county council in only two of the seven councilmanic districts even though they comprise a majority of the county's residents. Our analysis further shows that under a fairly apportioned plan blacks likely would be able to elect representatives of their choice from at least three districts. In addition, it appears that the proposed plan unnecessarily fragments the black community in the City of Marion.

Under these circumstances, I am unable to conclude, as I must under the Voting Rights Act, that the newly devised districts do not have the purpose or effect of discriminating on account of race. Accordingly, on behalf of the Attorney General, I must interpose an objection to the submitted redistricting.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that this change has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color or membership in a language minority group. In addition, the Procedures for the Administration of Section 5 (28 C.F.R. 51.44) permit you to request the Attorney General to reconsider the objection. However, until the objection is withdrawn or the judgment from the District of Columbia Court is obtained, the effect of the objection by the Attorney General is to make the submitted reapportionment plan legally unenforceable. See also 28 C.F.R. 51.9.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action Marion County plans to take with respect to this matter. If you have any questions concerning this letter, please feel free to call Carl W. Gabel (202-724-8388), Director of the Section 5 Unit of the Voting Section.

Sincerely,

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

August 23, 1982

C. Havird Jones, Jr., Esq.
Assistant Attorney General
P.O. Box 11549
Columbia, South Carolina 29211

Dear Mr. Jones:

This is in reference to Act No. R398 (1982), which abolishes the county board of education and superintendent of education and changes the method of selecting the members of the boards of education for Districts 1 and 2 from appointive to elective in Hampton County, South Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. Your submission was received on June 22, 1982. Although we noted your request for expedited consideration, we have been unable to respond until this time.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has no discriminatory purpose or effect. See Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.38). In reaching our determination in this matter, we have considered carefully all of the information provided with your submission as well as information from other interested parties.

Hampton County has a population that is 52 percent black. The county board of education, until now appointed, will be elected beginning in November of this year, a change precleared by this office on April 28, 1982. Under the current proposal, the boards of education for Districts 1 and 2 are also to be elected (rather than appointed) in the future. Based on the information submitted by the State, we are persuaded that this change in the District 1 and 2 Boards does not have either the purpose or effect of discriminating on the basis of race.

We cannot reach a like conclusion, however, with respect to the proposal to terminate the county board. Our analysis shows that the county board has been particularly responsive to the interests and needs of the black community

in Hampton County and consistently has appointed bi-racial representation on the local boards of trustees for both School District 1 and School District 2. We remain unsatisfied on the information submitted by the State that elimination of the county board -- in a county with a 52-percent black population and a system which allows the use of a plurality and single-shot method of election -- does not deprive black voters of an opportunity to elect representatives of their choice who can help assure that interests of blacks will be protected on a county-wide basis.

Under these circumstances, I cannot conclude, as I must under the Voting Rights Act, that the burden of showing that these changes will not be discriminatory toward blacks has been sustained. Therefore, on behalf of the Attorney General, I must object to Act No. R398 (1982).

Of course, as provided by Section 5 of the Voting Rights Act you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that these changes have neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color or membership in a language minority group. In addition, the Procedures for the Administration of Section 5 (28 C.F.R. 51.44) permit you to request the Attorney General to reconsider the objection. However, until the objection is withdrawn or the judgment from the District of Columbia Court is obtained, the effect of the objection by the Attorney General is to make Act No. R398 legally unenforceable. See also 28 C.F.R. 51.9.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action the State of South Carolina plans to take with respect to this matter. If you have any questions concerning this letter, please feel free to call Carl W. Gabel (202-724-8388), Director of the Section 5 Unit of the Voting Section.

Sincerely,

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

C. Havird Jones, Jr., Esq.
Assistant Attorney General
P.O. Box 11549
Columbia, South Carolina 29211

30 AUG 1982

Dear Mr. Jones:

This is in reference to the redistricting of county council and school board districts in Williamsburg County, South Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. Your submission was completed on June 29, 1982.

As you know, under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has no discriminatory purpose or effect. See e.g., Georgia v. United States, 411 U.S. 526 (1973); see also, Procedures for the Administration of Section 5, 28 C.F.R. 51.39(e). In order to prove the absence of a racially discriminatory effect, Williamsburg County must demonstrate, at a minimum, that the proposed county redistricting plan will not lead to "a retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise." Beer v. United States, 425 U.S. 130, 141 (1976). While the county is under no obligation to maximize minority voting strength, the county must demonstrate that the plan "fairly reflects the strength of [minority] voting power as it exists." Mississippi v. United States, 490 F. Supp. 569, 581 (D. D.C. 1979), citing Beer v. United States, supra, 425 U.S. at 139 n. 11 and 141; and City of Richmond v. United States, 422 U.S. 358, 362 (1975).

We have analyzed carefully the submitted plan and have, as the law requires, viewed the districts "from the perspective of the most current available population data," City of Rome v. United States, 446 U.S. 156, 186 (1980)(i.e., the 1980 Census data). That analysis has revealed a noticeable dilution or fragmentation of the minority vote in Williamsburg County. For example, under the existing

plan four of the seven districts have black majorities substantial enough to enable the black community to elect councilmembers of its choice to the county's governing body. Under the proposed plan, the black electorate likely will have a realistic opportunity for such success in only three of the seven districts, even though they represent over 62 percent of the county's population. In addition, we have noted the strangely irregular-shaped districts that have been employed in accomplishing this result.

Under these circumstances, and in light of the existing patterns of racial bloc voting that exist, we are unable to conclude, as we must, that the County has met its burden of proving that the plan meets the requirements of the Act and is free of a racially discriminatory purpose or effect. Accordingly, I must on behalf of the Attorney General, interpose an objection to the redistricting plan for county council and school board districts, pursuant to Section 5 of the Voting Rights Act of 1965.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that these changes have neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color or membership in a language minority group. In addition, the Procedures for the Administration of Section 5 (28 C.F.R. 51.44) permit you to request the Attorney General to reconsider the objection. However, until the objection is withdrawn or the judgment from the District of Columbia Court is obtained, the effect of the objection by the Attorney General is to make the redistricting of county council and school board districts legally unenforceable. See also 28 C.F.R. 51.9.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action Williamsburg County plans to take with respect to this matter. If you have any questions concerning this letter, please feel free to call Sandra S. Coleman (202-724-6718), Deputy Director of the Section 5 Unit of the Voting Section.

Sincerely,

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

cc: William E. Jenkinson, Esq.
County Attorney

U.S. Department of Justice

Civil Rights Division

DJ 166-012-3
G0258-0262

Office of the Assistant Attorney General

Washington, D.C. 20530

19 NOV 1982

C. Havird Jones, Jr., Esq.
Assistant Attorney General
State of South Carolina
P. O. Box 11549
Columbia, South Carolina 19111

Dear Mr. Jones:

This is in reference to your request that the Attorney General reconsider his August 23, 1982, objection under Section 5 of the Voting Rights Act of 1965, as amended, to Act No. R398 (1982), which abolishes the county board of education and superintendent of education and changes the method of selecting members of the boards of education for Districts 1 and 2 from appointive to elective in Hampton County, South Carolina. Your letter was hand delivered on September 1, 1982, along with information provided by Representative McTeer during a conference with departmental staff on that date. Information necessary for our reconsideration of the objection was also provided by Attorney John P. Linton on September 15, 1982.

We have reviewed carefully the information that you have provided to us, as well as comments and information coming to our attention from other sources. As a result of this analysis, we find that the concerns we initially had and which formed the basis for the August 23 objection to the abolishment of the county board have now been allayed.

Our major concern related to the apparent interest in portions of the black community to attempt to consolidate the two school districts and the effect of elimination of the county board as the authorizing body of any potential consolidation. A reappraisal of South Carolina law, however, establishes that the county board lacks authority to effect a consolidation and its abolition, therefore, will not have the potentially discriminatory impact we had initially perceived. In addition, although the county board had a fruitful relationship with the black community, its abolition will not prevent meaningful participation in school affairs. More recent information shows that black residents in both districts are well represented at all levels of administration and operation.

Accordingly, pursuant to the reconsideration guidelines promulgated in the Procedures for the Administration of Section 5 (28 C.F.R. 51.47), the objection interposed to the changes affecting voting contained in Act No. R398 (1982) is hereby withdrawn. However, we feel a responsibility to point out that Section 5 of the Voting Rights Act expressly provides that the failure of the Attorney General to object does not bar any subsequent judicial action to enjoin the enforcement of such changes. See also 28 C.F.R. 51.48.

Sincerely,

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

cc: John P. Linton, Esq.
Sinkler, Gibbs & Simons

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

17 DEC 1982

Roy D. Bates, Esq.
City Attorney
Post Office Box 147
Columbia, South Carolina 29217

Dear Mr. Bates:

This is in reference to your request that the Attorney General reconsider his August 2, 1982, objection under Section 5 of the Voting Rights Act of 1965, as amended, to the districting of councilmanic districts for the City of Columbia in Richland County, South Carolina. Your request was initially received on September 8, 1982, and supplemented on November 2, 1982.

We have carefully reviewed the information that you have provided to us, as well as comments from other interested parties. Our initial concern was predicated on the city not having met its burden of proving that the district lines were drawn without a racially discriminatory purpose or effect. We have now reviewed the information, comments and materials which recently have been provided and pursuant to the reconsideration guidelines promulgated in the Procedures for the Administration of Section 5 (28 C.F.R. 51.47), the objection interposed to the districting of councilmanic districts is hereby withdrawn. However, we feel a responsibility to point out that Section 5 of the Voting Rights Act expressly provides that the failure of the Attorney General to object does not bar any subsequent judicial action to enjoin the enforcement of such change. See also 28 C.F.R. 51.48.

Sincerely,

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

cc: Public File

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

Mr. Paul S. Paskoff
City Administrator
P. O. Box 190
Lancaster, South Carolina 29720

27 DEC 1982

Dear Mr. Paskoff:

This is in reference to Ordinance No. 1-74, which provides for the establishment of filing fees for the mayor and city councilmembers and the use of staggered terms for councilmembers; Ordinance No. 76-15, which provides for creation of the Municipal Election Commission, candidate qualification procedures and a majority vote requirement in judicially contested elections; and Ordinance No. 82-14, which provides for elimination of the nomination petition and waiver of filing fees for the mayor and councilmembers in the City of Lancaster, Lancaster County, South Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. Your submission was completed on October 25, 1982.

The Attorney General does not interpose any objection to these changes except for the use of a majority vote requirement in contested elections as discussed below. However, we feel a responsibility to point out that Section 5 of the Voting Rights Act expressly provides that the failure of the Attorney General to object does not bar any subsequent judicial action to enjoin the enforcement of such changes. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.48).

With respect to the use of a majority vote in elections which are contested (Section 10-16 of Ordinance No. 76-15), I note that the Attorney General objected to the use of majority vote requirements in Lancaster elections (Ordinance Nos. 76-16 and 77-27) on September 19, 1978, copy attached. The bases for the objection to the use of majority vote requirements in regular elections would appear to be applicable to the use of a majority vote requirement in contested elections and we have been afforded no information warranting a different conclusion. Accordingly, on behalf of the Attorney General I must object to the majority vote provision described in Ordinance No. 76-15.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that this use of majority vote has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. In addition, the Procedures for the Administration of Section 5 (28 C.F.R. 51.44) permit you to request the Attorney General to reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the effect of the objection by the Attorney General is to make the use of majority vote in contested elections, as in all other elections, legally unenforceable. See also 28 C.F.R. 51.9.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action the City of Lancaster plans to take with respect to this matter. If you have any questions concerning this letter, please feel free to call Cari W. Gabel (202-724-8388), Director of the Section 5 Unit of the Voting Section.

Sincerely,

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

January 12, 1983

J. Lewis Cromer, Esq.
Richland County Attorney
P. O. Box 192
Columbia, South Carolina 29202

Dear Mr. Cromer:

This is in reference to the proposed change in the number of members of the county council from eleven to seven for Richland County, South Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. Your submission was received on November 12, 1982, and supplemented on November 16, December 20, and December 22, 1982. In accordance with your request, expedited consideration has been given this submission pursuant to the Procedures for the Administration of Section 5 (28 C.F.R. 51.32), in order to provide you with a response prior to the referendum election scheduled for January 18, 1983.

Under Section 5 of the Voting Rights Act, the submitting jurisdiction bears the burden of showing that the submitted changes have neither a discriminatory purpose nor a discriminatory effect. See Georgia v. United States, 411 U.S. 526 (1973); see also 28 C.F.R. 51.39(e). In order to show the absence of a racially discriminatory effect, the jurisdiction must demonstrate that the proposed changes will not lead to "a retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise." Beer v. United States, 425 U.S. 130, 141 (1976).

We have given careful consideration to the information you have submitted, as well as that provided by other interested parties. In our review of the potential effect of the proposed change we have considered, as the courts suggest, the electoral circumstances that actually exist in the county. See City of Rome v. United States, 472 F. Supp. 221, 247 (D. D.C. 1979), aff'd, 446 U.S. 156 (1980). In doing so, we find that election returns provided by the county for county council elections

held since 1976 indicate that presently blacks have been elected to two of the eleven council seats under the existing plan--one in those years when six seats are filled and one when five seats are filled. We find further that black candidates receive most of their support from the black citizens of the county. See Washington v. Finlay, 664 F.2d 913, 918 (4th Cir. 1981). Thus, it would appear that blacks have an existing realistic opportunity for electing candidates of their choice to at least two of the eleven seats on the council.

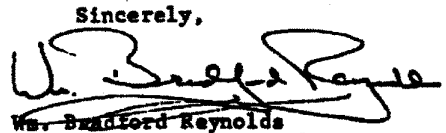
On the other hand, our analysis shows that, with one explainable exception, blacks have never won with a standing higher than fourth among the winning candidates. With the level of racial bloc voting that seems to exist in Richland County, it would appear that if the number of positions on the council is reduced to seven, with the members being elected on a staggered 5/2 basis as proposed, blacks likely would be able to elect no more than one candidate of their choice to the county council.

Under these circumstances, I am unable to conclude, as I must under the Voting Rights Act, that the proposed reduction in the size of the Richland County Council is not retrogressive. Accordingly, I must, on behalf of the Attorney General, interpose an objection to the proposed change.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the change in number of members has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. In addition, the Procedures for the Administration of Section 5 (28 C.F.R. 51.44) permit you to request the Attorney General to reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the effect of the objection by the Attorney General is to make the proposed reduction in the number of members of the Richland County Council legally unenforceable. See also 28 C.F.R. 51.9.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action Richland County plans to take with respect to this matter. If you have any questions concerning this letter, please feel free to call Sandra S. Coleman (202-724-6718), Deputy Director of the Section 5 Unit of the Voting Section.

Sincerely,



Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

25 APR 1983

William H. Seals, Esq.
Marion County Attorney
P.O. Box 1041
Marion, South Carolina 29571-1041

Dear Mr. Seals:

This is in reference to your request that the Attorney General reconsider his August 16, 1982, objection under Section 5 of the Voting Rights Act of 1965, as amended, to the redistricting of councilmanic districts (Act No. R345 (1982)) in Marion County, South Carolina. Your letter was received on August 31, 1982; supplemental information was received at your meeting of September 23, 1982, with members of my staff and subsequently on October 7, 1982.

We have considered carefully the information and comments presented in connection with your request for reconsideration. In particular, we have noted the comments and observations of the black councilmembers in support of the plan and their views that racial bloc voting does not now exist to the extent we thought likely at the time of our objection. We also note that the black candidate who won the primary in 50-percent black District 5 shares the view of the black councilmembers that racial bloc voting is no longer the phenomenon we had thought it to be in Marion County elections.

In view of these considerations, I find the concerns which led to the objection sufficiently allayed to warrant a change of that determination at this time. Accordingly, the objection is withdrawn. However, we feel a responsibility to point out that Section 5 of the Voting Rights Act expressly provides that the failure of the Attorney General to object does not bar any subsequent judicial action to enjoin the enforcement of such change. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.48).

Sincerely,

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

AUG 26 1983

C. Havird Jones, Jr., Esq.
Assistant Attorney General
P.O. Box 11549
Columbia, South Carolina 29211

Dear Mr. Jones:

This is in reference to the method of electing members of the county board of education and the area boards of trustees (Act No. R700 (1976)); the redefining of residency requirements for the trustees of the Andrew Jackson District to conform to the 1977 annexation, etc. (Act No. R304 (1977)); the referendum election to propose the abolishment of the office of county superintendent of education and the method of selecting the administrator of the county school system (Act No. R767 (1978)); and the delegation of duties by the county board of education to any of the four area boards of trustees (Act No. R528 (1982)) in Lancaster County, South Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received the information to complete your submissions on June 27, 1983.

We have given careful consideration to the information you have provided, including information used in our analysis of similar changes in 1974. We have also considered Bureau of the Census data and comments and information provided by other interested parties.

The Attorney General does not interpose any objections to the changes contained in Act Nos. R304 (1977), R528 (1982), and the referendum election provided for in Act No. R767 (1978). However, we feel a responsibility to point out that Section 5 of the Voting Rights Act expressly provides that the failure of the Attorney General to object does not bar any subsequent judicial action to enjoin the enforcement of such changes. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.48).

In a telephone conversation on August 18, 1983, Ms. Kathy Belnap of your staff advised Ms. Barbara Rohen of our staff that the State wishes to withdraw the submission of the other changes contained in Act No. R767 (1978) because the propositions failed to receive voter approval at the referendum election. Therefore, the Attorney General will make no determination with respect to these matters. See also 28 C.F.R. 51.23. We note that any future attempt to implement these changes will be subject to the preclearance requirements of Section 5.

We are unable, however, to conclude that you have satisfied your burden of showing that Act No. R700 (1976) is free of the prohibited racial effect or purpose. We note that on July 30, 1974, the Attorney General interposed an objection to certain provisions of Act No. 1622 (1972), including the use of staggered terms in area boards of trustees elections. Litigation was necessary to resolve a question of the scope of our objection, and on October 10, 1974, a consent decree was filed which enjoined the county from staggering terms in trustee elections as was described in Act No. 1622. United States v. Lancaster County Election Commission, et al., C.A. No. 14-1528 (D. S.C.). A similar staggering of terms was contained in Act No. R700 (1976) which was submitted to the Attorney General under Section 5 on May 31, 1976. While we requested additional information with regard to that submission on July 30, 1976, the information was not received until June 27, 1983. Thus, the use of staggered terms in trustee elections has been legally unenforceable throughout this period.

Our present examination of this matter shows, as we indicated in our previous objection letter, that the use of staggered terms limits the potential for blacks to participate effectively in the electoral process by reducing the ability of minority voters to use single-shot voting in at-large elections. This is particularly important in circumstances such as those in Lancaster County which include the apparent existence of racial bloc voting.

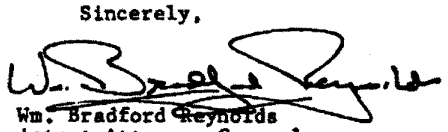
Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has no discriminatory purpose or effect. See Georgia v. United States, 411 U.S. 526 (1973); 28 C.F.R. 51.39(e). In light of

the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that that burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the use of staggered terms, which is provided for in Act No. R700 (1976).

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that this change has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. In addition, Section 51.44 of the guidelines permits you to request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the effect of the objection by the Attorney General is to make the further implementation of staggered terms legally unenforceable. 28 C.F.R. 51.9.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action Lancaster County plans to take with respect to this matter. This is especially important in view of the fact, as we understand it, that staggered terms have been used in boards of trustees elections since 1976. If you have any questions, feel free to call Carl W. Gabel (202-724-8388), Director of the Section 5 Unit of the Voting Section.

Sincerely,



Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

MAR 20 1984

Terrell Glenn, Esq.
McNair, Glenn, Konduros, Corley,
Singletary, Porter & Dibble, P.A.
Post Office Box 11390
Columbia, South Carolina 29111

Dear Mr. Glenn:

This is in reference to R321 which concerns the schedule for the 1984 primary elections for the South Carolina Senate. R321 was submitted to this Department for review pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c on March 13, 1984, and you and other counsel for the State met with departmental officials on March 14 to discuss the submission. We note that you are submitting the resolution on behalf of the state, even though the primary elections are conducted by political parties; we find such a submission to be appropriate inasmuch as the political parties act as instrumentalities of the State in conducting the primary election. In accordance with your request, we have conducted the Section 5 review of the voting changes occasioned by R321 on an expedited basis pursuant to the Procedures for the Administration of Section 5 (28 C.F.R. 51.32).

Under the terms of the resolution, the state would commence implementation of the reapportionment plan (Act 257) which is the subject of the Section 5 declaratory judgment action in State of South Carolina v. United States, C.A. No. 83-3626 (D.D.C.). Candidates for senate positions would qualify pursuant to the districts of the proposed plan during the period from March 16 through March 30, 1984. The date for the primary election would be postponed from June 12, 1984, until July 24, 1984. Although R321 operates on the assumption that Act 257 will receive Section 5 preclearance from the court, the resolution provides that candidate qualification would reopen if the reapportionment plan does not receive judicial preclearance and a new plan is drawn. The resolution

does not describe the length of the renewed qualification period and, because of the uncertainty of when the court's decision would be entered or when a redrawn plan would be precleared, the resolution is unable to establish a time period for campaigning. As we understand your proposal, the elections for the Senate will be held on July 24 regardless of the date of the court's decision, that is, even if the court's decision was rendered on July 23, 1984, the primary would be conducted on July 24, 1984. The resolution makes no provision for cancelling the election in the event that the court is unable to render a decision prior to July 24, 1984.

We have given careful consideration to the resolution and the information you presented to us at our March 14 meeting. Specifically you asked us to consider the decisions of the District Court for the District of Columbia in Charlton County Board of Education v. United States, 459 F. Supp. 530 (D.D.C. 1978) and Busbee v. Smith, 549 F. Supp. 494 (D.D.C. 1982); you argued that those decisions demonstrate that it is not improper to begin implementation of Act 257 prior to obtaining Section 5 preclearance.

In analyzing the instant submission we believe that the inescapable conclusion is that you are asking us to grant Section 5 preclearance for virtually the same voting changes which are pending in State of South Carolina v. United States; although the date for casting ballots is postponed, all other steps necessary to conduct the election (e.g. candidate qualification, campaigning, publicity, ballot printing) would be carried out under the terms of Act 257 and the great majority of those steps would be completed prior to the earliest date on which we could expect a decision from the district court.

While we are cognizant of the state's desire to hold an election on the earliest possible date, any such election must be conducted in accordance with the terms of the Voting Rights Act. At the time this lawsuit was filed, the state recognized that "under the provisions of Section 5 of the Voting Rights Act, Act 257 cannot be implemented until it has received preclearance ..." and that candidate qualification could not begin under Act 257 unless and until that preclearance had been obtained. (Memorandum in Support of Motion to Expedite Action at pp. 7-8.) We agree with the state's description of the legal standard since "Section 5 itself

enjoined any election utilizing the new boundaries specified in the plan" (Beer v. United States, 374 F. Supp. 357, 362 (D.D.C. 1974)), and thus the state may not implement the plan "in any fashion unless and until [the District] Court issues a declaratory judgment that said [plan] has neither a discriminatory purpose nor effect." Busbee v. Smith, C.A. No. 82-0665 (D.D.C. May 24, 1982), slip op. p. 5.

At our March 14 meeting you argued that the court's decision in Charlton establishes that the conduct of an election under an unprecleared plan does not constitute the type of "implementation" of the plan which is prohibited by the Voting Rights Act. The Charlton decision depends on a unique set of facts, however, facts which are not present here. It is one thing for a court to decline at the eleventh hour to exercise its injunctive powers to stop an election under an unprecleared plan where the parties to be enjoined are not properly before the court. It is quite another for the Attorney General to preclear some feature of a proposed plan that would allow implementation to begin while the court is still considering the plan as a whole under Section 5. We cannot read Charlton as permitting the sort of piecemeal preclearance process you have suggested. Rather, we regard the Voting Rights Act as establishing a legal bar to commencement of any part of the election process under Act 257 prior to the time that it takes effect -- and Act 257 cannot, as a matter of law, take effect until it receives Section 5 preclearance.

There are, of course, good and sufficient practical reasons why Congress imposed such a requirement on covered jurisdictions subject to the Voting Rights Act. If, as you submit, we were to allow candidate qualification to proceed under an unprecleared plan -- especially one, as here, that the Attorney General maintains should not be precleared -- those interested in seeking office would be required to expend considerable time, energy and money campaigning in a district that may never gain approval. This needless burden, along with inevitable voter confusion if Senate elections are ultimately required to go forward under a different districting plan, counsel against the kind of premature qualification activity you urge. Clearly, it is measurably less disruptive of the electoral process to await the court's decision on preclearance of Act 257, and permit candidate qualifying to commence only after final approval of a plan (whether it be Act 257 or some alternative) has been obtained.

Accordingly, on behalf of the Attorney General, I must interpose a Section 5 objection to the election schedule established by R321. Although I feel compelled to enter this Section 5 objection at this time, I emphasize that we stand ready to review promptly a schedule for the conduct of elections as soon as a plan is precleared.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that this election schedule has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. In addition, Section 51.44 of the guidelines permits you to request that the Attorney General reconsider the objection. However, until the objection is withdrawn or the judgment from the District of Columbia Court is obtained, the effect of the objection by the Attorney General is to make the election schedule legally unenforceable. 28 C.F.R. 51.9.

We are aware that the State already has initiated this election schedule by opening candidate qualification on March 16, 1984. Thus, I request that upon receipt of this letter you inform us of the course of action the State of South Caroline plans to take with respect to this matter. If you have any questions concerning this letter, please feel free to call Paul F. Hancock (202-724-3095) of the Voting Section.

We are providing a copy of this letter to each member of the three-judge court hearing State of South Carolina v. United States and to counsel of record.

Sincerely,

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

26 MAR 1984

Mr. R. Powell Black
Town Advisor
P. O. Box 306
Jefferson, South Carolina 29718

Dear Mr. Black:

This refers to the increase in the length of terms of office for the mayor and councilmembers from two to four years, and the adoption of staggered terms for the councilmembers of the Town of Jefferson in Chesterfield County, South Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received the information to complete your submission on January 27, 1984.

We have considered carefully the information provided by you as well as that provided by other interested parties. Our analysis of election returns and other relevant data for the Town of Jefferson and vicinity shows that black candidates do not place higher than third or fourth in an at-large election. For example, the one black candidate who has been successful in city council elections came in third out of eleven candidates in 1976, fourth out of seven in 1980, and third out of eight in 1982. The present system, where the candidates who receive the four highest vote totals are elected to the town council, has enabled that candidate to be elected to office. However, under the submitted system, once the staggered terms are fully in place, only the candidates who place first or second will be elected; this likely would eliminate the black representation that has existed. Such a situation would be retrogressive to the gains already achieved in minority political participation and therefore would have the effect of diluting the right to vote on account of race. Beer v. United States, 425 U.S. 130 (1976).

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose or effect. See Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.39(e)). In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that that burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the implementation of Ordinance No. 8 (1983), which provides that councilmembers be elected to four-year, staggered terms.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that these changes have neither the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. In addition, Section 51.44 of the guidelines permits you to request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the effect of the objection by the Attorney General is to make the four-year, staggered terms legally unenforceable. 28 C.F.R. 51.9.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action the Town of Jefferson plans to take with respect to this matter. If you have any questions, feel free to call Carl W. Gabel (202-724-8388), Director of the Section 5 Unit of the Voting Section.

Sincerely,

W. Bradford Reynolds

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

26 MAR 1984

Thomas M. Boulware, Esq.
Brown, Jeffries & Boulware
P. O. Box 248
Barnwell, South Carolina 29812

Dear Mr. Boulware:

This refers to Act No. 960, R1117 (1966) which provides for four-year staggered terms for the election of the mayor and six aldermembers in the City of Barnwell in Barnwell County, South Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your initial submission on August 11, 1983; supplemental information was received on January 26, 1984.

We have given careful consideration to the information you have provided as well as Census data and comments and information provided by other interested parties. According to the 1980 Census, the city is 37.7 percent black. Aldermembers are elected under the at-large method of election with staggered terms and our analysis indicates that racially polarized voting patterns exist.

Although black candidates have run for the position as aldermember in seven of the last nine elections, none has ever been elected. Under such circumstances, reducing the number of positions available in each election, as the result of the imposition of staggered terms, has the effect of limiting the potential for minority voters to elect the candidate of their choice and, thus, constitutes a retrogression in the position already gained by the affected minority group in the political process. Such a retrogression would have the effect of denying or abridging the right to vote on account of race or color. See Beer v. United States, 425 U.S. 130 (1976).

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has no discriminatory purpose or effect. See Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.39(e)). In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that that burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the implementation of Act No. 960.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that this change has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. In addition, Section 51.44 of the guidelines 28 C.F.R. 51.44 permits you to request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the effect of the objection by the Attorney General is to make Act No. 960 legally unenforceable. 28 C.F.R. 51.9.

Finally, we note that the city is presently implementing a majority vote feature which appears not to have been precleared under Section 5 of the Voting Rights Act since our records fail to show that the majority vote requirement has been submitted to the United States District Court for the District of Columbia for judicial review or to the Attorney General for administrative review as required by Section 5 of the Act. If our information is correct, it is necessary that this change either be brought before the District Court for the District of Columbia or submitted to the Attorney General for a determination that the change does not have the purpose and will not have the effect of discriminating on account of race or color. Changes in procedure which affect voting are unenforceable unless and until the Section 5 preclearance requirements have been met. See the enclosed Procedures for the Administration of Section 5 (28 C.F.R. 51.9).

Should you elect to submit majority vote change to the Attorney General, please follow the procedures set forth in Section 51.18 et seq. of the guidelines.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action the City of Barnwell plans to take with respect to these matters. If you have any questions, feel free to call Ms. Sandra S. Coleman, Deputy Director of the Section 5 Unitof the Voting Section. Refer to File Nos. H5201 H7207 in any response to this letter so that your correspondence will be channeled properly.

Sincerely,

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

27 APR 1984

C. Havird Jones, Jr., Esq.
Assistant Attorney General
P. O. Box 11549
Columbia, South Carolina 29211

Dear Mr. Jones:

This is in reference to the method of selecting members for the county board of education and the method of electing members to the four area boards of trustees (Act No. R282 (1984)) in Lancaster County, South Carolina, submitted to the Attorney General on February 27, 1984, pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c.

We have given careful consideration to the information you have provided, including information considered in our analysis of similar changes reviewed by us in 1974 and 1983. We also have considered relevant Bureau of the Census data and comments and information provided by other interested parties.

At the outset, we note that on July 30, 1974, the Attorney General interposed an objection to certain provisions of Act No. 1622 (1972), including the use of staggered terms in area board of trustee elections. Similar changes were contained in Act No. R700 (1976), to which an objection was interposed by the Attorney General under Section 5 on August 26, 1983. Thus, the use of staggered terms in trustee elections has been legally unenforceable throughout this period.

As we indicated on the occasions of our previous objections, the use of staggered terms in Lancaster County school board elections, where the at-large system is used and racial bloc voting seems to exist, limits the potential for black voters to participate effectively in the electoral process by

reducing the ability of those voters to use single-shot voting. Nothing has been presented to demonstrate that a like effect will not flow from implementation of the staggered terms provision at this time, and the county has advanced no compelling reason for further delaying the remedying of the impermissible implementation of staggered term elections that has taken place during the past eight years.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has no discriminatory purpose or effect. See Georgia v. United States, 411 U.S. 526 (1973) and the Procedures for the Administration of Section 5 (28 C.F.R. 51.39(e)). In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that that burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to any further use of staggered terms as provided for in Act No. R282 (1984).

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that this change has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. In addition, Section 51.44 of the guidelines permits you to request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the effect of the objection by the Attorney General is to make the further use of staggered terms for school trustee elections legally unenforceable. See also 28 C.F.R. 51.9.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us within fifteen days of the course of action Lancaster County plans to take with respect to this matter. If you have any questions, feel free to call Carl W. Gabel (202-724-8388), Director of the Section 5 Unit of the Voting Section.

Sincerely,

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

June 11, 1984

C. Havird Jones, Jr., Esq.
Assistant Attorney General
P. O. Box 11549
Columbia, South Carolina 29211

Dear Mr. Jones:

This refers to Act No. 1104, R1357 (1966), which provides for a three-member county council elected at-large from residency districts by plurality vote for two-year, nonstaggered terms in Edgefield County, South Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your submission on April 11, 1984.

We have considered the information you have provided, as well as Bureau of the Census data and information furnished by other interested parties. In 1979, the Department conducted a Section 5 review of the county's proposed implementation of home rule in the context of the at-large election system. In interposing a Section 5 objection to the voting changes at issue at that time, our February 8, 1979, objection letter noted:

> Our analysis reveals that blacks constitute 52 percent of the population of Edgefield County and that under the proposed ordinance implementing Home Rule, council members will be elected at-large from residency districts. * * *
>
> Court decisions, to which we feel obligated to give great weight, have established that the use of at-large elections in situations where there is a cognizable racial minority and a history of voting along racial lines has the potential for impermissibly diluting minority voting strength. * * *
>
> * * * * *

> Our review discloses that there has been substantial support for a referendum in Edgefield County, particularly among the black voters. According to our information black citizens of Edgefield County filed petition in May 1976 requesting such a referendum, a request that was denied by the county * * *. It is our further information that black citizens in Edgefield strongly favor the adoption of a single-member district system of elections. However, because the county has rejected the effort of the black community to petition for a referendum and since the county also has chosen not to call for such a referendum on its own motion, the apparent sentiment for a change to single-member districts has not been brought to a vote. Accordingly, the promise of public participation in the selection of the form of government and method of election under home rule has simply not been realized in Edgefield County.

Our review of the present submission reveals that the factors which led to the February 8, 1979, Section 5 objection continue to exist in Edgefield County. We also note that the at-large election structure in Edgefield County has been examined by the District Court for the District of South Carolina to determine whether the at-large system impermissibly dilutes the voting strength of black citizens of the county. The court found initially that the at-large system violated the constitutional standard of Zimmer v. McKeithen, 485 F.2d 1297 (5th Cir. 1973). Although a subsequent decision of the Supreme Court resulted in a vacation of the district court's constitutional analysis, the Zimmer factors subsequently were incorporated into Section 2 of the Voting Rights Act as a result of the 1982 Amendments to the Act.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has no discriminatory purpose or effect. See Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.39(e)). In addition,

a submitted change may not be precleared if it "so discriminates on the basis of race or color as to violate the Constitution" (Beer v. United States, 425 U.S. 130, 141 (1976)), or if we find that the plan violates Section 2 of the Voting Rights Act, as amended, 42 U.S.C. 1973 (S. Rep. No. 97-417, 97th Cong., 2d Sess. 12 n. 31 (1982)). Under these principles and in view of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that that burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the implementation of the provisions of Act No. 1104 (1966).

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that these changes have neither the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. In addition, Section 51.44 of the guidelines permits you to request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the effect of the objection by the Attorney General is to make the implementation of Act No. 1104 (1966) legally unenforceable. 28 C.F.R. 51.9.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action the State of South Carolina plans to take with respect to this matter. If you have any questions, feel free to call Sandra S. Coleman (202-724-6718), Deputy Director of the Section 5 Unit of the Voting Section.

Sincerely,

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

June 11, 1984

Charles W. Whetstone, Jr., Esq.
Felder and Whetstone
U.S. 601 North
P. O. Box 437
St. Matthews, South Carolina 29135

Dear Mr. Whetstone:

This refers to the April 5, 1984, referendum election; the change to four-year, staggered terms for councilmembers and four-year terms for the mayor; and the majority vote requirement for councilmembers and water commissioners for the Town of Elloree in Orangeburg County, South Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received the information to complete your submission on April 10, 1984.

The Attorney General does not interpose any objection to the April 5, 1984, referendum election and the four-year terms for the position of mayor. However, we feel a responsibility to point out that Section 5 of the Voting Rights Act expressly provides that the failure of the Attorney General to object does not bar any subsequent judicial action to enjoin the enforcement of such changes. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.48).

We have considered carefully the information you have provided, as well as that provided by other interested parties regarding the change from concurrent, two-year terms to staggered, four-year terms for town councilmembers and the change from plurality to majority vote requirement for election to the town council and water commission. We note that blacks constitute 34.43 percent of the town's population. Our analysis also indicates that, in the context of the racial bloc voting patterns that seems to exist in Elloree, a change from concurrent elections by a simple plurality to staggerd terms and a majority vote requirement adversely affect the ability of minorities to elect candidates of their choice to office, particularly where, as here, single-shot voting is permitted under state law.

cc: Public File

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has no discriminatory purpose or effect. See Georgia v. United States, 411 U.S. 526 (1973); see also 28 C.F.R. 51.39(e). In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that that burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the change to staggered terms for councilmembers and a majority vote requirement for election to the town council and water commission.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that these changes have neither the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. In addition, Section 51.44 of the guidelines permits you to request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the effect of the objection by the Attorney General is to make the change to staggered terms for the town council and the imposition of a majority vote requirement for election to the town council and water commission legally unenforceable. 28 C.F.R. 51.9.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action the Town of Elloree plans to take with respect to this matter. If you have any questions, feel free to call Carl W. Gabel (202-724-8388), Director of the Section 5 Unit of the Voting Section.

Sincerely,

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

10 AUG 1984.

Terrell L. Glenn, Esq.
McNair, Glenn, Konduros, Corley,
Singletary, Porter & Dibble
P. O. Box 11390
Columbia, South Carolina 29211

Dear Mr. Glenn:

This refers to Senate Bill No. 1093, R626 (1984), which establishes a new senate reapportionment plan for the State of South Carolina and a proposed schedule for implementing the plan in special elections this year. These voting changes have been submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your submission on August 9, 1984, and, in accordance with your request, we have conducted the Section 5 review of the voting changes on an expedited basis pursuant to the Procedures for the Administration of Section 5 (28 C.F.R. 51.32).

The Attorney General does not interpose any objection to the voting changes to be occasioned by the senate reapportionment plan embodied in Senate Bill No. 1093. However, we feel a responsibility to point out that Section 5 of the Voting Rights Act expressly provides that the failure of the Attorney General to object does not bar any subsequent judicial action to enjoin the enforcement of such change. In addition, as authorized by Section 5, the Attorney General reserves the right to reexamine this submission if additional information that would otherwise require an objection comes to his attention during the remainder of the sixty-day review period. See also 28 C.F.R. 51.42 and 51.48.

Although it appears that the reapportionment plan embodied in Senate Bill No. 1093 will afford to black citizens a fair opportunity to participate in the political process and elect candidates of their choice to office, we are concerned whether that potential will become reality in light of the 1984 election schedule which also is contained in the bill. The boundaries of the new districts have received Section 5 preclearance only today, and prospective candidates must qualify no later than 12:00 noon on August 15; a period of only three weeks has been allowed for campaigning before the first primary election. The bill enacting the revised plan was passed by the General Assembly only this week and little has been done to inform voters of the new district boundaries. In fact, our analysis of a map contained in a news article, which you represented to be the State's effort to inform voters with regard to the reapportionment plan embodied in Senate Bill No. 1093, reveals that the printed district boundaries differ significantly from the boundaries contained in Senate Bill No. 1093. You have informed us that other newspapers have printed the correct map, but the potential for voter confusion clearly remains.

In Busbee v. Smith, 549 F. Supp. 494, 518-526 (1982), aff'd, 51 U.S.L.W. 3552 (U.S. Jan, 24, 1983), the District Court for the District of Columbia addressed the Section 5 merits of a similar election schedule. The court's analysis is relevant here (id. at 521):

> The reapportionment plan significantly altered the configuration and racial composition of the ... Districts, [at issue] and neither voters nor potential candidates knew where the lines would fall until the state secured section 5 approval on August 24. Under the state's schedule, the primary - arguably the most important election ... cf. United States v. Classic, 313 U.S.299, 313-14 ... (1941) (discussing the practical importance of primaries) - was to be held only three weeks later. This schedule not only would have prevented potential candidates from mounting effective campaigns, but more important, would have frustrated voters' attempts to prepare themselves to make a reasoned choice among the candidates. We concluded, therefore, that Georgia's defense of its proposed schedule fell far short of meeting the state's statutory burden of proof.

Since the modifications to the boundaries of the reapportionment plan embodied in Act 257--the State's original plan--were undertaken to enhance black voting strength, the truncated schedule is likely to have a particularly disparate impact upon black voters.

We recognize, of course, that the proposed election schedule adopted by the General Assembly is the same schedule adopted by the District Court for the District of South Carolina for implementation of the reapportionment plan approved in Graham v. Daniel, Civ. No. 3:84-1430-15. However, the Graham decision was specific in allowing the General Assembly to enact a new reapportionment plan, and we do not understand the order as precluding the State from adopting an election schedule which will allow for implementation of any such new plan in a racially fair manner.

We have considered also your argument that the proposed schedule (particularly the seven weeks between the runoff and the general election) is necessary to comply with federal statutes designed to protect the voting rights of civilian and military citizens overseas. The argument is unpersuasive for several reasons. The federal statutes at issue (the Overseas Citizens Voting Rights Act, 42 U.S.C. 1973dd et seq. and the Federal Voting Assistance Act, 42 U.S.C. 1973cc), require only that states permit overseas civilian and military personnel to vote by absentee ballot for federal offices, and thus the mandatory provisions of these statutes do not apply to state senate elections. While efforts by states to allow citizens overseas to vote in state and local elections are encouraged and are commendable, we note that the State of South Carolina has made no apparent effort to adopt a schedule which would allow such citizens to vote in the primary and runoff elections for positions in the state senate. Additionally, the State is not precluded from adopting a schedule which would allow overseas citizens to vote in all elections. While such a schedule would lengthen the election process, the longer time period may be necessary to allow all citizens a fair opportunity to participate effectively in the electoral process.

For the above reasons, I cannot conclude that the State has satisfied its burden of demonstrating that the proposed election schedule is entitled to Section 5 preclearance and accordingly, I must on behalf of the Attorney General, interpose a Section 5 objection to the

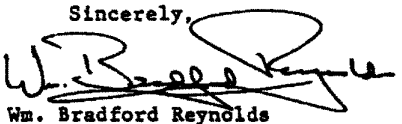
proposed schedule for implementing the reapportionment plan embodied in Senate Bill No. 1093.

Although I am compelled to enter this objection, we are willing to assist the State in its efforts to devise an alternate schedule which meets the requirements of federal law. Of course, it remains the responsibility of the State to devise the schedule, but you should note that the schedule approved by the court in Busbee provided that the first primary would be held on the date of the general election and the entire election process was completed in the same calendar year. We also have continued to evaluate schedule options which would allow the general election for positions in the senate to be conducted on November 6. In that regard you might consider a schedule whereby candidates would qualify during the period from August 14 through August 28; the first primary would be conducted on October 9; and the second primary would be conducted on October 16. We offer this schedule only as a suggestion and we remain willing to consider alternative schedules. In our view, the important time period is that prior to the first primary and we believe that approximately sixty days is the the minimum time necessary for a racially fair primary election. Options also are available for protecting the voting rights of overseas citizens (such as delaying certification of final election results so as to provide an extended time for receipt of absentee ballots) and we are available to discuss such options if you desire.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the election schedule as proposed has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. In addition, Section 51.44 of the guidelines permits you to request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the effect of the objection by the Attorney General is to make the election schedule legally unenforceable. 28 C.F.R. 51.9.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action the State of South Carolina plans to take with respect to this matter. If you have any questions, feel free to call Paul F. Hancock (202-724-3095).

Sincerely,



Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

August 31, 1984

C. Havird Jones, Jr., Esq.
Assistant Attorney General
P. O. Box 11549
Columbia, South Carolina 29211

Dear Mr. Jones:

This refers to your request that the Attorney General reconsider the March 26, 1984, objection interposed to Act No. 960, R117 (1966), which provides for four-year, staggered terms and to your initial submission of the majority vote requirement for the election of the mayor and board of aldermembers for the City of Barnwell in Barnwell County, South Carolina. We received both your request for reconsideration and your submission on July 2, 1984.

With regard to the request for reconsideration of the March 26, 1984, objection to Act No. 960 (1966), we have reviewed carefully the information that you have provided and the arguments which you have advanced, as well as comments and information furnished by other interested parties. However, we find no basis for altering the conclusions that led to the initial Attorney General's decision. Therefore, on behalf of the Attorney General, I must decline to withdraw the objection.

We likewise have given careful consideration to the information you have provided concerning the adoption of a majority vote requirement, as well as to Census data and comments and information obtained from other interested parties with respect to that issue. According to the 1980 Census, the city is 37.7 percent black and our analysis indicates that racially polarized voting patterns exist.

Because the only legally enforceable method of election for the City of Barnwell is at-large with a plurality vote requirement and concurrent terms, we have reviewed the proposed change to majority vote in that context. Implementation of the majority vote requirement, coupled with the at-large method of election and in the context of racial bloc voting, increases the likelihood of "head-to-head" contests between black and white candidates, thus diminishing the opportunity that would otherwise exist for blacks to utilize single-shot voting for a candidate of their choice. Under these circumstances, the change to majority vote constitutes an impermissible retrogression in the position of the affected minority group in the political process, a situation which has the effect of denying or abridging the right to vote on account of race or color. See Beer v. United States, 425 U.S. 130 (1976).

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has no discriminatory purpose or effect. See Georgia v. United States, 411 U.S. 526 (1973); and 28 C.F.R. 51.39(e). In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that that burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the implementation of the majority vote requirement.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that neither of these changes has either the purpose or will have the effect of denying or abridging the right to vote on account of race or color. Also, particularly in regard to the majority vote requirement, Section 51.44 of the guidelines permits you to request that the Attorney General reconsider the objection. However, as previously noted with regard to the staggered terms matter, until the objections have been withdrawn or appropriate judgments from the District of Columbia Court have been obtained, the effect of the objections by the Attorney General is to make the staggered terms and the majority vote requirement legally unenforceable. 28 C.F.R. 51.9.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action the City of Barnwell plans to take with respect to these matters. If you have any questions, feel free to call Sandra S. Coleman (202-724-6718), Deputy Director of the Section 5 Unit of the Voting Section.

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

August 31, 1984

C. Havird Jones, Jr., Esq.
Assistant Attorney General
P. O. Box 11549
Columbia, South Carolina 29211

Dear Mr. Jones:

This refers to your request that the Attorney General reconsider the March 26, 1984, objection interposed to Act No. 960, R117 (1966), which provides for four-year, staggered terms and to your initial submission of the majority vote requirement for the election of the mayor and board of aldermembers for the City of Barnwell in Barnwell County, South Carolina. We received both your request for reconsideration and your submission on July 2, 1984.

With regard to the request for reconsideration of the March 26, 1984, objection to Act No. 960 (1966), we have reviewed carefully the information that you have provided and the arguments which you have advanced, as well as comments and information furnished by other interested parties. However, we find no basis for altering the conclusions that led to the initial Attorney General's decision. Therefore, on behalf of the Attorney General, I must decline to withdraw the objection.

We likewise have given careful consideration to the information you have provided concerning the adoption of a majority vote requirement, as well as to Census data and comments and information obtained from other interested parties with respect to that issue. According to the 1980 Census, the city is 37.7 percent black and our analysis indicates that racially polarized voting patterns exist.

Because the only legally enforceable method of election for the City of Barnwell is at-large with a plurality vote requirement and concurrent terms, we have reviewed the proposed change to majority vote in that context. Implementation of the majority vote requirement, coupled with the at-large method of election and in the context of racial bloc voting, increases the likelihood of "head-to-head" contests between black and white candidates, thus diminishing the opportunity that would otherwise exist for blacks to utilize single-shot voting for a candidate of their choice. Under these circumstances, the change to majority vote constitutes an impermissible retrogression in the position of the affected minority group in the political process, a situation which has the effect of denying or abridging the right to vote on account of race or color. See Beer v. United States, 425 U.S. 130 (1976).

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has no discriminatory purpose or effect. See Georgia v. United States, 411 U.S. 526 (1973); and 28 C.F.R. 51.39(a). In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that that burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the implementation of the majority vote requirement.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that neither of these changes has either the purpose or will have the effect of denying or abridging the right to vote on account of race or color. Also, particularly in regard to the majority vote requirement, Section 51.44 of the guidelines permits you to request that the Attorney General reconsider the objection. However, as previously noted with regard to the staggered terms matter, until the objections have been withdrawn or appropriate judgments from the District of Columbia Court have been obtained, the effect of the objections by the Attorney General is to make the staggered terms and the majority vote requirement legally unenforceable. 28 C.F.R. 51.9.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action the City of Barnwell plans to take with respect to these matters. If you have any questions, feel free to call Sandra S. Coleman (202-724-6718), Deputy Director of the Section 5 Unit of the Voting Section.

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

September 10, 1984

C. Havird Jones, Jr., Esq.
Assistant Attorney General
P. O. Box 11549
Columbia, South Carolina 29211

Dear Mr. Jones:

This refers to Act No. R1400 (1966), which provides for a seven-member County Board of Education with three members appointed by the Governor and two members elected from each of two double-member districts (Road Districts Nos. One and Two) to four-year staggered terms, and to Act No. R1008 (1972), which provides for a change in the method of electing these board members from the method provided for in R1400 (1966) to election from one of the four single-member or multi-member districts created for this purpose in Newberry County, South Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. The initial submission of Act No. R1008 (1972) was received on May 8, 1972. The initial submission of Act No. R1400 (1966) as well as additional information on Act No. R1008 (1972) was received on June 13, 1983. Additional information on both Acts was received on July 12, 1984.

We have considered the information you have provided, as well as Bureau of the Census data and information furnished by other interested parties. We note that Newberry County has a population of 31,242, of whom 9,872 (or 31.6%) are black, that prior to 1966, there were eight members on the County Board of Education appointed by the Governor and that no black ever has been elected to a position on the board. With regard to Act No. R1400 (1966), we note at the outset that the districting plan for the implementation of the provisions of that Act was enacted in June, 1968 (Act No. R970), and that the one person - one vote requirement was not considered in the drawing of that districting plan. Although Act No. R970 never has been submitted for Section 5 review, the information you have provided indicates that the double-member districts provided in that plan are severely malapportioned.

While such malapportionment raises considerations under the Fourteenth Amendment which are not per se of concern under Section 5, such is not the case where, as here, there is an extreme underrepresentation in the district which contains the large majority of the minority population.

With regard to Act No. R1008 (1972), we note that no data was provided in response to our June, 1972 request for several items, including the population and number of registered voters, by race, for the old and new districts. This information is basic to a review of an election plan and is especially significant in a county, such as yours, which has in place, and elects its governing body from, single-member districts, one of which contains a black population majority, since that fact evidences a readily available alternative which would recognize the potential of minorities to elect a candidate of their choice to the Board of Education.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a change has no discriminatory purpose or effect. See Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.38). In this regard, we have noted your statement that no population data were generated for the 1972 plan. However, in view of your failure to provide the Attorney General with any information which would allow for a proper evaluation of that plan, and in view of the other circumstances discussed above, we cannot conclude that your burden has been sustained in this instance with respect to either plan. Therefore, on behalf of the Attorney General, I must object to the implementation of the provisions of Acts Nos. R1400 (1966) and R1008 (1972).

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that these changes have neither the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. In addition, Section 51.44 of the guidelines permits you to request that the Attorney General reconsider the objections. However, until the objections are withdrawn, or judgments from the District of Columbia Court are obtained, the effect of the objections by the Attorney General is to make the implementation of the provisions of both Acts legally unenforceable. 28 C.F.R. 51.9.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action the State of South Carolina plans to take with respect to these matters. If you have any questions, feel free to call Carl W. Gabel (202-724-8388), Director of the Section 5 Unit of the Voting Section.

Sincerely,

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

SEP 11 1984

C. Havird Jones, Jr., Esq.
Assistant Attorney General
P. O. Box 11549
Columbia, South Carolina 29211

Dear Mr. Jones:

This refers to Act No. R522 (1984) which relates to the assistance to voters in the State of South Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your submission on July 13, 1984. Although we noted your request for expedited consideration, we have been unable to respond until this time.

According to your submission letter, Act R522 (1984) which amends §7-13-770 of the 1976 South Carolina Code of Law was enacted to bring the State of South Carolina into compliance with Section 208 of the Voting Rights Act. Section 208 states:

> Any voter who requires assistance to vote by reason of blindness, disability, or inability to read or write may be given assistance by a person of the voter's choice, other than the voter's employer or agent of that employer or officer or agent of the voter's union.

Section 7-13-770, as amended by Act No. R522, would allow a South Carolina voter needing assistance to receive such assistance from anyone he or she chooses except that a manager selected by the chairman of the managers must accompany the voter and helper into the voting booth (unless the person selected is a family member).

Earlier this year this provision of South Carolina law was brought to our attention by the Democratic Party of South Carolina with a request for our view on the provision's compliance. Our response, a copy of which was supplied to your office, set forth our view that the instant provision contravenes Section 208 of the Voting Rights Act, since this oversight provision would compromise the principle established by Section 208 that the voter is entitled to decide who will accompany him or her into the voting booth. We have detected nothing in our present analysis which would alter that view. For your convenience, another copy of that earlier letter is enclosed.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has no discriminatory purpose or effect. See Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.39(e)). In the administration of this provision, the Attorney General has taken the position that voting changes which are inconsistent with other provisions of the Voting Rights Act cannot be considered to have met the Section 5 standard for preclearance. Therefore, on behalf of the Attorney General, I must interpose an objection to Act No. R522 (1984).

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that this change has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. In addition, Section 51.44 of the guidelines permits you to request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the effect of the objection by the Attorney General is to make Act No. R522 legally unenforceable. 28 C.F.R. 51.9.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action the State of South Carolina plans to take with respect to this matter. If you have any questions, feel free to call Sandra S. Coleman (202-724-6718), Deputy Director of the Section 5 Unit of the Voting Section.

Sincerely,

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

OCT 10 1984

C. Havird Jones, Jr., Esq.
Assistant Attorney General
State of South Carolina
P. O. Box 11549
Columbia, South Carolina 29211

Dear Mr. Jones:

This refers to your request that the Attorney General reconsider his objection to Act No. R522 (1984), which relates to the assistance to voters in the State of South Carolina. We received your letter on September 17, 1984, and in accordance with your request, expedited consideration has been given this matter pursuant to the Procedures for the Administration of Section 5 (28 C.F.R. 51.32).

We have reviewed carefully the information that you have provided to us, as well as comments and information provided by other interested parties. However, our current analysis has disclosed nothing which would warrant a change in our previous determination. We continue to believe that Act No. R522 is facially inconsistent with Section 208 of the Voting Rights Act which, with certain exceptions, requires that those providing assistance be "a person of the voter's choice." Therefore, on behalf of the Attorney General, I must decline to withdraw the objection.

Although we are unable to withdraw the objection under Section 5, we fully understand the State's legitimate interest in preventing voter fraud and otherwise assuring the integrity of its electoral process as set forth in Chapter 25 of the State's Election Code and elsewhere. For that reason, I emphasize that the Attorney General's objection to the routine use of poll managers to "assist the voter" under Act No. R522 should not be considered as precluding the State from taking appropriate action to enforce its referenced laws dealing with fraud and other improprieties in the electoral process.

In this connection, such enforcement activities might include selective use of poll managers to monitor assistance provided to blind, disabled or illiterate voters where there is credible evidence that the assistance provided is part of a scheme to miscast voters' ballots and where such a monitoring effort is permissible under state law. In light of the explicit language of Section 208 of the Voting Rights Act, however, monitoring of assistors should be handled, if at all, by someone other than a voter's employer or union official. Moreover, any abuse of the electoral process by those engaged in monitoring activity must be dealt with promptly and harshly under available civil and criminal statutes.

Of course, the Voting Rights Act permits you to seek a declaratory judgment from the United States District Court for the District of Columbia that, notwithstanding this objection, the change is not inconsistent with Section 208 of the Act and merits Section 5 preclearance. As previously noted, however, until such a judgment is obtained from that court, the legal effect of the objection by the Attorney General is to render the change in question legally unenforceable. See also 28 C.F.R. 51.9.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action the State of South Carolina plans to take with respect to this matter. If you have any questions, feel free to call Sandra S. Coleman (202/724-6718), Deputy Director of the Section 5 Unit of the Voting Section.

Sincerely,

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

NOV 23 1984

C. Havird Jones, Jr., Esq.
Assistant Attorney General
P. O. Box 11549
Columbia, South Carolina 29211

Dear Mr. Jones:

This refers to your request that the Attorney General reconsider the September 10, 1984, objection under Section 5 of the Voting Rights Act of 1965, as amended, to Act No. R1008 (1972), which provides for the election of the seven-member County Board of Education from the four single-member and multimember districts created for this purpose in Newberry County, South Carolina. We understand that you do not seek reconsideration of the objection also interposed on September 10, 1984, to Act No. R1400 (1966). We received your initial request on September 20, 1984; supplemental information was received on September 24, 1984.

We have reviewed carefully the information that you have provided to us, as well as comments and information received from other interested parties. Our analysis indicates that in the four districts created by Act No. R1008 to elect the members of the county board of education, blacks comprise approximately 31 percent, 43 percent, 30 percent, and 20 percent of the population, respectively. Under the 1980 Census, the deviations in the population of the proposed districts is in excess of $\pm$ 31 percent and the districts in which the underrepresentation occurs are the districts which contain the largest proportions of blacks.

We still have been provided no justification, particularly one unrelated to race, for the continued use of a starkly malapportioned electoral scheme which necessarily operates to deny a significant portion of the minority community equal access to the political process. Withdrawal of the Attorney General's

objection in these circumstances would serve to countenance the very result that Section 5 of the Voting Rights Act was intended to prevent. Since the county still has not met its burden of showing that Act No. R1008 (1972) is free of a discriminatory purpose or effect, I must, on behalf of the Attorney General, continue the objection.

Of course, Section 5 permits you to seek a declaratory judgment from the United States District Court for the District of Columbia that this change has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race or color, irrespective of whether the change previously has been objected to by the Attorney General. As previously noted, however, until such a judgment is rendered by that court, the legal effect of the objection by the Attorney General to Act No. R1008 (1972), as well as to Act No. R1400 (1966), for which you did not request reconsideration, is to render the changes involved unenforceable. See also 28 C.F.R. 51.9.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action the State of South Carolina plans to take with respect to this matter. If you have any questions, feel free to call Robert S. Berman (202-724-8388), Attorney Supervisor of the Section 5 Unit of the Voting Section.

Sincerely,

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

June 28, 1985

C. Havird Jones, Jr., Esq.
Assistant Attorney General
P. O. Box 11549
Columbia, South Carolina 29202

Dear Mr. Jones:

This refers to the procedures for conducting the March 1983 special election for school district trustees for School Districts 1 and 2 in Hampton County, South Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your submission on April 29, 1985.

We have considered carefully all of the information provided with your submission as well as that from other interested parties. In making our determination it will be helpful to recount briefly the history of the changes now before us.

On April 9, 1982, South Carolina enacted Act No. 549 which abolished the then-existing county board of education and provided for the election of the two local boards of trustees. That legislation also provided for the initial election to those board of trustee positions (theretofore appointive offices) in November 1982 with a candidate qualifying period to run from August 16 to August 31 of that year. However, on August 23, 1982, the Attorney General interposed a timely objection to the implementation of Act No. 549, thereby continuing the unenforceability of that statute under the provisions of the Voting Rights Act. See the Procedues for the Administration of Section 5 (28 C.F.R. 51.1); Busbee v. Smith, No. 82-0665 (D. D.C. May 24, 1982); Connor v. Waller, 421 U.S. 656 (1975). Accordingly, no election for those positions was held in November 1982.

Subsequently, on November 19, 1982, the Attorney General's objection was withdrawn, thereby removing the legal bar to the implementation of Act No. 549. As a result, the state authorized and the county called a special election for the board of trustee

positions to be held on March 15, 1983. The county did not, however, provide for a new candidate qualifying period but, rather, adopted (but did not reopen) for the newly called election the qualifying period previously held as a part of the November 1982 election schedule, namely, August 16 through August 31, 1982. The new election date and the adoption of the previously held qualifying period as a part of that election schedule essentially are the changes now before us for our review. See NAACP v. Hampton County Election Commission, 53 U.S.L.W. 4207 (U.S. Feb. 27, 1985).

At the outset, we note that even though the required Section 5 preclearance had not been obtained and that there was substantial opposition from members of the minority community to the voting changes embodied in Act No. 549, the county nevertheless began implementation of that act's provisions, i.e., the qualifying period, prior to Section 5 preclearance. The Voting Rights Act makes it clear that unprecleared changes are legally unenforceable until and unless the Attorney General of the United States or the United States District Court for the District of Columbia says otherwise. Busbee v. Smith, supra, slip op. at 3. By requiring candidates to file for the board of trustee elections when the changes permitting those elections had not met the preclearance requirements of the Voting Rights Act, the county was requiring candidates to make choices and commitments, and possibly to expend considerable time, energy, and money campaigning, in districts which may never have gained approval. See State of South Carolina v. United States and NAACP, 585 F. Supp. 418 (D. D.C. 1984). In fact, as noted above, an objection to the implementation of that election system actually was interposed for a time.

In this regard, we note that at least three experienced black school board members declined to lend credibility to the illegal implementation of those changes by not qualifying to run for election under the unprecleared plan. Yet, once the newly created elective positions in the independent school districts had received Section 5 preclearance, those candidates, and conceiveably others, were precluded from qualifying as candidates for the new elections by virtue of the county's decision to adopt without reopening the August 16-31, 1982, qualifying period for the later announced March 15, 1983, election.

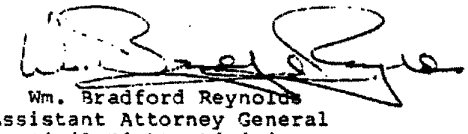
Our analysis shows that this restriction on candidacies for the March 15, 1983, election adversely affected the opportunity of black voters to elect candidates of their choice. For example, election results from other school board elections in the county reveal that at least some of those whose candidacy was rejected by the county enjoyed substantial support among voters in the black community. Yet, the county has provided no compelling justification for failing to provide within reasonable proximity of the election a candidate qualifying period which would allow the special election ballot to reflect the intervening changes in political circumstances between August 1982 and February 1983.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has no discriminatory purpose or effect. See Georgia v. United States, 411 U.S. 526 (1973); see also 28 C.F.R. 51.39(e). Under the circumstances involved here, I am unable to conclude, as I must under the Voting Rights Act, that the qualifying period adopted for the March 15, 1983, special election had no discriminatory effect upon the black voters of Hampton County. Therefore, on behalf of the Attorney General, I must object to the holding of the special election under those conditions.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that these changes have neither the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. In addition, Section 51.44 of the guidelines permits you to request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia court is obtained, the effect of the objection by the Attorney General is to render the March 15, 1983, special election of board of education trustees in Hampton County School Districts 1 and 2 of no legal effect. 28 C.F.R. 51.9.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action Hampton County plans to take with respect to these matters. If you have any questions, feel free to call Sandra S. Coleman (202-724-6718), Director of the Section 5 Unit of the Voting Section.

Sincerely,



Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

July 16, 1985

Mr. Buddy Womick
Director, Public Information
P. O. Drawer 1749
Spartanburg, South Carolina 29304-1749

Dear Mr. Womick:

This refers to 105 annexations to the City of Spartanburg in Spartanburg County, South Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received the information to complete your submissions on May 17, 1985.

The Attorney General will make no determination with regard to four of these annexations (Nos. A-4, A-14, A-27 and A-28) since they were made prior to November 1, 1964, and, thus, are not subject to the preclearance requirements of Section 5. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.4(b)). Further, our records indicate that three of these annexations (Nos. A-91, A-97 and A-100) received preclearance under Section 5 on September 3, 1974, and January 30, 1979. Therefore, no further determination with regard to these annexations is necessary or appropriate under Section 5. See 28 C.F.R. 51.33.

The Attorney General does not interpose any objections to the following 46 annexations (Nos. A-31, A-55, A-61, A-62, A-63, A-67, A-77, A-78, A-79, A-81, A-82, A-83, A-86, A-87, A-95, A-101, A-103, A-105, A-106, A-108, A-109, A-111, A-112, A-113, A-116, A-117, A-118, A-120, A-121, A-123, A-124, A-125, A-126, A-127, A-129, A-130, A-131, A-132, A-133, A-136, A-137, A-139, A-141, A-142, A-143, and A-144). However, we feel a responsibility to point out that Section 5 of the Voting Rights

Act expressly provides that the failure of the Attorney General to object does not bar any subsequent judicial action to enjoin the enforcement of such changes. 28 C.F.R. 51.48.

In regard to annexation No. A-147, we understand from your conversations with Ms. Lina Bader of our staff, that the city is not seeking preclearance of that annexation at this time since the ordinance for that annexation is being prepared for submission, along with other recent annexations, in the near future. Therefore, the Attorney General has not considered that annexation as part of this submission and makes no determination relative to it at this time.

However, with regard to the remaining 52 annexations (Nos. A-29, A-30, A-33, A-34, A-35, A-36, A-37, A-38, A-40, A-41, A-45, A-46, A-48, A-49, A-50, A-51, A-53, A-57, A-58, A-59, A-60, A-64, A-69, A-72, A-73, A-74, A-75, A-76, A-80, A-84, A-89, A-90, A-92, A-93, A-94, A-96, A-98, A-102 A-104, A-107, A-110, A-114, A-115, A-119, A-122, A-128, A-134, A-135, A-138, A-140, A-145 and A-146), we are unable to reach a similar result on the information provided. We have considered carefully the information you have submitted, data obtained from the 1980 Census, and information provided by other interested parties. At the outset, we note that even though blacks constitute over 40 percent of the city's population, and although there have been many minority candidacies, only one black ever has been elected to the city council. This appears in substantial part to be the result of a general pattern of racially polarized voting occurring in the context of Spartanburg's at-large election system with its staggered terms and majority vote requirement.

The proposed annexations seem to exacerbate the difficulty that minorities have participating equally in the electoral process. While the City suggests that the added residential areas produce only a minimal reduction of the minority population, we are unable to verify this assertion on the available data, and in fact we are concerned that the dilution may be substantially greater than indicated.

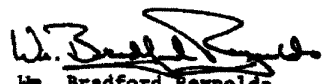
Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has no discriminatory purpose or effect. See Georgia v. United States, 411 U.S. 526 (1973); see also 28 C.F.R. 51.39(e). In

light of the considerations discussed above, I cannot conclude, as I must under the Act, that the City has provided sufficient information to sustain its burden in this instance. Therefore, on behalf of the Attorney General, I must object to the 52 annexations listed above.

Of course, as provided by Section 5 of the Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that these changes have neither the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. Further, Section 51.44 of the guidelines permits you to request that the Attorney General reconsider the objection. In this regard, we note the Supreme Court's observation in City of Richmond v. United States, supra, at 378, that a dilution such as that involved here nevertheless may pass Section 5 muster "as long as the post-annexation electoral system fairly recognizes the minority's political potential." However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the effect of the objection by the Attorney General is to make the 52 annexations legally unenforceable insofar as voting rights are concerned. 28 C.F.R. 51.9.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action the City of Spartanburg plans to take with respect to this matter. If you have any questions, feel free to call Poli A. Marmolejos (202-724-8388), Attorney Supervisor in our Section 5 Unit of the Voting Section.

Sincerely,



Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

OCT 6 1987

Richard K. Walker, Esq.
Bishop, Cook, Purcell
& Reynolds
1200 Seventeenth Street, N. W.
Washington, D.C. 20036-3006

Dear Mr. Walker:

This refers to your request that the Attorney General reconsider the July 16, 1985, objection under Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c, to fifty-two annexations by the City of Spartanburg in Spartanburg County, South Carolina. We received your request on July 1, 1987; supplemental information supporting the request was received on August 19, 1987.

In our letter of objection, we noted the city's contention "that the added residential areas produce only a minimal reduction of the minority population." However, the information available at the time did not support that assertion and we, therefore, were unable to conclude that the city had carried its burden of showing the absence of a proscribed effect.

In response to your request for reconsideration we have reviewed the population data recently developed by the city through its special census, and it now appears that these annexed areas indeed have had a de minimus effect on the black population percentage in the city and do not significantly affect black voting strength. Accordingly, on behalf of the Attorney General, I am withdrawing the objection to the fifty-two annexations. See City of Richmond v. United States, 422 U.S. 358 (1975). Even so, we feel a responsibility to point out that Section 5 of the Voting Rights Act expressly provides that the failure of the Attorney General to object does not bar any

subsequent judicial action to enjoin the enforcement of such changes. See Section 51.41 of the Procedures for the Administration of Section 5 (52 Fed. Reg. 496 (1987)).

In that regard, it should be noted that the decision to withdraw the Section 5 objection to the annexations does not affect in any manner our pending lawsuit which challenges, under Section 2 of the Act, the at-large method of electing the Spartanburg city council.

Sincerely,

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

Robert R. Horger, Esq.
Orangeburg County Attorney
P. O. Box Drawer 329
Orangeburg, South Carolina 29116

SEP 3 1985

Dear Mr. Horger:

This refers to the reapportionment of councilmanic districts in Orangeburg County, South Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1937c. We received information to complete your submission on July 11, 1985.

We have considered carefully the information provided in your submission, as well as that from other interested parties. The 1980 Census indicates that because of population changes since 1970, it was necessary to reapportion county council districts. Our review of the information submitted to us revealed that several alternative plans were developed and considered by county officials, but that the plan ultimately selected, and submitted, failed to give any meaningful recognition to the significant increase in the county's minority population over the past decade.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has no discriminatory purpose or effect. See Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.39(e)). While the Act imposes no obligation on a jurisdiction to maximize minority voting strength, it does prohibit the drawing of a redistricting plan so as to unfairly minimize the voting strength of black citizens. See Busbee v. Smith, 549 F. Supp. 494 (D. D.C. 1982). In light of the county's failure to reflect in its submitted redistricting the measurable increase in the county's minority voters, and the absence of a satisfactory explanation for this oversight, I cannot conclude, as I must to preclear this plan, that Orangeburg County has met its burden under Section 5 in this instance. Therefore, on behalf of the Attorney General, I must object to the reapportionment of council districts to be occasioned by County Resolution 84-2-3 (1985).

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that this change has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. In addition, Section 51.44 of the guidelines permits you to request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the effect of the objection by the Attorney General is to make the reapportionment Resolution 84-2-3 (1985) of no legal effect.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action Orangeburg County plans to take with respect to this matter. If you have any questions, feel free to call Sandra S. Coleman (202-724-6718), Director of the Section 5 Unit of the Voting Section.

Sincerely,

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

October 21, 1985

Ms. Lourena N. English
City Clerk
P. O. Box 1449
Sumter, South Carolina 29150

Dear Ms. English:

This refers to the 57 annexations to the City of Sumter in Sumter County, South Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received the information to complete your submissions on August 23, 1985.

We have considered carefully the information you have submitted, data obtained from the 1980 Census, and information provided by other interested parties. Based upon our review, the Attorney General does not interpose any objections to 12 of these annexations (Ordinance Nos. 578, 583 (1965); Nos. 617, 618 (1968); Nos. 659, 662 (1972); No. 696 (1974); Nos. 721, 735 (1976); No. 885 (1982); Nos. 905, 922 (1983)). However, we feel a responsibility to point out that Section 5 of the Voting Rights Act expressly provides that the failure of the Attorney General to object does not bar any subsequent judicial action to enjoin the enforcement of such changes. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.48).

With regard to the remaining 45 annexations (Ordinance Nos. 576, 577, 579, 581, 584 (1965); Nos. 589, 590, 591 (1966); Nos. 614, 615, 616, 624, 625, 626, 627, 628 (1968); Nos. 631, 634 (1969); Nos. 658, 660, 661 (1972); Nos. 668, 669, 672, 674, 677, 679, 683 (1973); Nos. 687, 688, 689 (1974); No. 710 (1975); Nos. 719, 720, 734, 739, 741 (1976); Nos. 880, 884, 903, 904 (1982); Nos. 912, 920, 921, 931 (1983)), we are unable to reach a similar conclusion. At the outset, we note that even though black citizens constitute almost 40 percent of the city's population, and although there have been several minority candidacies, no black has been elected to the city council in recent times. This appears in substantial part to be the result of a general pattern of racially polarized voting

occurring in the context of Sumter's at-large election system--a system that includes a majority vote requirement and staggered terms. Against this electoral milieu, the proposed annexations, which our analysis shows have decreased the city's minority population by approximately 4.98 percent, serve to enhance the ability of the white majority to exclude blacks totally from participation in the governing of the city through membership on the city council, an effect not permissible under the Voting Rights Act. See City of Richmond v. United States, 422 U.S. 358, 370 (1975). In addition, we are concerned that what appears to be a pattern of annexation which seems calculated to take in only whites while excluding predominantly black areas has not been satisfactorily explained.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has no discriminatory purpose or effect. See Georgia v. United States, 411 U.S. 526 (1973); see also 28 C.F.R. 51.39(e). In light of the considerations discussed above, I cannot conclude, as I must under the Act, that the city has sustained its burden in this instance. Therefore, on behalf of the Attorney General, I must object to the 45 annexations listed above.

Of course, as provided by Section 5 of the Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that these changes have neither the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. Further, Section 51.44 of the guidelines permits you to request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the effect of the objection by the Attorney General is to make the 45 annexations legally unenforceable insofar as voting rights are concerned. 28 C.F.R. 51.9.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action the City of Sumter plans to take with respect to this matter. If you have any questions, feel free to call Sandra Coleman (202-724-8388), Director of the Section 5 Unit of the Voting Section.

Sincerely,

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

February 24, 1986

Richard J. Breibart, Esq.
Griffith, Coleman, Sawyer
& Breibart
P. O. Box 1318
Lexington, South Carolina 29072

Dear Mr. Breibart:

This refers to the adoption of a council form of government and a majority vote requirement for the City of Batesburg in Lexington and Saluda Counties, South Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received the information to complete your submission on December 26, 1985.

We have considered carefully the information you have provided, as well as comments and information from other interested parties. With regard to the adoption of the council form of government, the Attorney General does not interpose any objection. However, we feel a responsibility to point out that Section 5 of the Voting Rights Act expressly provides that the failure of the Attorney General to object does not bar any subsequent judicial action to enjoin the enforcement of such change. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.48).

We are not able to reach the same conclusion with regard to the majority vote requirement. Under the city's election system, the mayor and the six councilmembers are elected at large, with the councilmembers being required to reside in specified districts. Our analysis of elections in Batesburg

raises a clear inference that voting in elections involving black candidates is polarized along racial lines and that this voting pattern has hampered the ability of black voters to elect candidates of their choice. The city has not provided us with sufficient information to counter this conclusion.

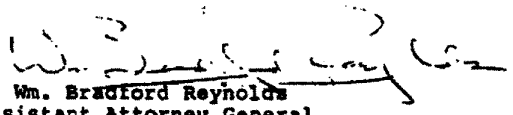
In this context, the incorporation of a majority vote requirement, which increases the probability of "head-to-head" contests between black candidates and white candidates, will in all likelihood dilute minority voting strength and thereby exacerbate the election difficulties currently faced by black voters. See, e.g., Rogers v. Lodge, 458 U.S. 613, 627 (1982); City of Port Arthur v. United States, 459 U.S. 159 (1982).

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has no discriminatory purpose or effect. See Georgia v. United States, 411 U.S. 526 (1973); see also 28 C.F.R. 51.39(e). In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that the city has sustained its burden in this instance. Therefore, on behalf of the Attorney General, I must object to the majority vote requirement.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that this change has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. In addition, Section 51.44 of the guidelines permits you to request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the effect of the objection by the Attorney General is to make the majority vote requirement legally unenforceable in the City of Batesburg. 28 C.F.R. 51.9.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action the City of Batesburg plans to take with respect to this matter. If you have any questions, feel free to call Steven H. Rosenbaum (202-724-8388), Attorney/Reviewer of the Section 5 Unit of the Voting Section.

Sincerely,



Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

APR 10 1986

Jack W. Erter, Jr., Esq.
Lee, Wilson, Erter & Booth
P. O. Box 580
Sumter, South Carolina 29151

Dear Mr. Erter:

This refers to your request for reconsideration of the October 21, 1985, objection to 45 annexations; the increase from four to six councilmembers; the change in the method of electing councilmembers from at large to four single-member districts and two at-large seats with single-shot voting allowed; the districting plan; the procedures for conducting the April 8, 1986, referendum; and 53 additional annexations to the City of Sumter in Sumter County, South Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your submission of 33 additional annexations on January 29, 1986. We received your submission of the April 8, 1986, referendum, the districting plan, and the changes in the method of electing the council, upon which is based your request for a reconsideration of the October 21, 1985, objection, on February 6, 1986. We received your submission of 20 other additional annexations on March 6th. Supplemental information regarding the 33 annexations was received on February 5th, and on March 6th. Supplemental information on all of the foregoing matters was received on March 10th.

We have considered carefully the information you have submitted, data obtained from the 1980 Census, and information provided by other interested parties. Based upon our review, the Attorney General does not interpose any objections to the procedures for conducting the April 8, 1986, referendum and the following 12 annexations: Ordinance Nos. 935, 940, 945, 949(a), and 963 (1984); Nos. 972, 993, 996, 998, 1012, 1014 (1985); and No. 1034 (1986)). However, we feel a responsibility to point out that Section 5 of the Voting Rights Act expressly provides that the failure of the Attorney General to object does not bar any subsequent judicial action to enjoin the enforcement of such changes. In addition, as authorized by

Section 5, the Attorney General reserves the right to reexamine these submissions if additional information that would otherwise require an objection comes to his attention during the remainder of the 60-day review period. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.42 and 51.48).

With regard to our reconsideration of our objection to the earlier 45 annexations, our review of the 41 remaining additional annexations, and our review of the method of election and districting plan, we note at the outset that the newly submitted annexations include many all-black residential areas and, therefore, alleviate in large measure our previously expressed concern about racial selectivity in annexations. Nevertheless, we must review cumulatively the effect of these annexations together with that of the 45 annexations to which we interposed an objection in October 1985. See City of Rome v. United States, 446 U.S. 156, 186 (1980). Accordingly, the effect of the 86 annexations taken as a whole still produces a 3.2 percentage point reduction in the black population in the City of Sumter, from 44.4 percent to 41.2 percent. This reduction, while smaller than the 4.98 percentage point reduction as of October 1985, is politically significant in light of the uncontroverted existence of racial bloc voting in the city. In these circumstances, the city bears the burden of demonstrating that its proposed method of election fairly reflects minority voting strength as it exists in the enlarged city and that the submitted plan is free of a discriminatory purpose and effect. See City of Richmond v. United States, 422 U.S. 358 (1975).

The plan increases the size of the city council from four to six members and maintains the full voting power of the mayor, thus effectively creating a seven-member council. Four councilmembers would be elected from single-member districts and two other councilmembers and the mayor would be elected at large. Two of the four single-member districts have black voting age majorities providing blacks a realistic opportunity, given existing racial polarization, to elect two of the seven voting members of the council. At the same time, because the proposed plan provides for the election of three members at large, the city's pattern of racial bloc voting effectively eliminates all prospects for minority representation in those positions. Our concern is that this proposal fails in its particulars to ameliorate the retrogressive effect of the annexations in a sufficient manner to permit preclearance of both.

In light of these considerations, I cannot conclude, as I must under the Act, that the city has sustained its burden with respect to a number of the changes involved in this submission. Therefore, on behalf of the Attorney General, I must object to the increase from four to six councilmembers, the proposed election method and districting plan, and the 41 annexations not precleared in the early part of this letter. Likewise, I must decline to withdraw the October 21, 1985, objection to the 45 annexations submitted previously.

In reaching this conclusion, I should readily acknowledge that the city's efforts to meet our earlier objection are commendable and demonstrate a good faith attempt to satisfy the Voting Rights Act. We understand that a number of alternative election methods and districting plans were considered by the city in evaluating its 4-2-1 plan, some of which (including some retaining an at-large feature) appeared preliminarily to us to fairly reflect minority voting strength throughout the city after all proposed areas are annexed. The city may therefore wish to reconsider those proposals.

Of course, as provided by Section 5 of the Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that these changes have neither the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. Further, Section 51.44 of the guidelines permits you to request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the effect of the objection interposed here and the failure to withdraw the previous objection is to render the election method changes and the 41 additional annexations legally unenforceable and to continue the legally unenforceable status of the 45 previously submitted annexations, insofar as voting rights are concerned. 28 C.F.R. 51.9.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action the City of Sumter plans to take with respect to this matter. If you have any questions, feel free to call Steven H. Rosenbaum (202-724-6718), Acting Director of the Section 5 Unit of the Voting Section.

Sincerely,

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

WBM:SSC:NG:jmc:dvs
DJ 166-012-3
X2028; M9532-9537
K5329; K6887; M9531
K6888; R1729-2054
M0982; M9522-9529
M4898-4899; M4901
M9530

October 10, 1986

Mr. Joseph F. Christie, Jr.
Planning Director
104 Civic Center
Summerville, South Carolina 29483

Dear Mr. Christie:

This refers to the 649 annexations acomplished from 1964 to 1986; the adoption of staggered terms; the procedures for conducting the October 3, 1972, September 12, 1983, and September 12, 1984, special elections; and the establishment of Fire Station No. 3 as a polling place in the Town of Summerville in Dorchester County, South Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We initially received information relating to some of the annexations involved in this submission on October 31, 1984; supplemental information and information about other annexations necessary to complete your submission were received on March 1 and June 1, 1985, and February 14, and August 11, 1986.

We have considered carefully the information you have submitted, data from the 1960, 1970 and 1980 Censuses and information provided by other interested parties. Based upon our review, the Attorney General does not interpose any objections to the 77 annexations shown to have occurred between 1964 and 1979 nor to the post-1980 annexations, identified on the attached list, which are zoned for nonresidential use. The Attorney General also interposes no objection to the procedures for conducting the October 3, 1972, September 12,1983, and September 12, 1984, special elections or to the establishment of Fire Station No. 3 as a polling place. However, we feel a responsibility to point out that Section 5 of the Voting Rights Act expressly provides that the failure of the Attorney General to object does not bar any subsequent judicial action to enjoin the enforcement of any of these changes. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.48).

With regard to the remaining post-1980 annexations and the adoption of staggered terms, we are unable to reach a similar conclusion. At the outset, we note that although there have been a number of minority candidacies, black voters have been unable to elect a candidate of their choice to the town council. This appears in substantial part to be the result of a general pattern of racially polarized voting occurring in the context of the Summerville at-large election system which has been exacerbated by the imposition since 1979 of the staggered terms requirement. Staggered terms reduces the number of positions available in each election, thus, further limiting the potential for minority voters to elect the candidates of their choice. Under Beer v. United States, 425 U.S. 130 (1976), such a requirement, in the circumstances of Summerville, would appear to have the proscribed retrogressive effect.

Against the above-described electoral milieu, the post-1980 residential annexations, contrary to the annexations occurring during the earlier period, decreased the town's minority population by approximately 7 percent, and served more effectively to exclude blacks totally from participation in the governing of the town through membership on the council, an effect not permissible under the Voting Rights Act. See City of Richmond v. United States, 422 U.S. 358, 370 (1975). In addition, the treatment afforded the predominantly black areas of Brownsville and Germantown raises concerns about what appears to be a recent pattern of annexations calculated to take in whites to the exclusion of blacks, a concern that has not been satisfactorily addressed by the city. See City of Pleasant Grove v. United States, Civil Action No. 80-2589 (D. D.C. Oct. 7, 1981).

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has no discriminatory purpose or effect. See Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.39(e)). In view of the considerations discussed above, we cannot conclude that the city's burden has been sustained with regard to the post-1980 residential annexations. Therefore, on behalf of the

Attorney General, I must object to the post-1980 annexations not reflected on the attached list, as well as to the use of the staggered terms requirement discussed earlier.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that these changes have neither the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. In addition, Section 51.44 of the guidelines permits you to request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the effect of the objection by the Attorney General is to make the staggered terms provision and the referenced post-1980 annexations, insofar as they affect voting, legally unenforceable. 28 C.F.R. 51.9.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action the Town of Summerville plans to take with respect to this matter. If you have any questions, feel free to call Sandra S. Coleman (202-724-6718), Director of the Section 5 Unit of the Voting Section.

Sincerely,

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General *Washington, D.C. 20530*

October 14, 1986

C. Havird Jones, Esq.
Assistant Attorney General
P. O. Box 11549
Columbia, South Carolina 29211

Dear Mr. Jones:

This refers to the implementation schedule for the election of the board of education from single-member districts for the Consolidated School District of Aiken County in Aiken and Saluda Counties, South Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received the information to complete your submission on September 24, 1986. In accordance with your request, expedited consideration has been given this submission pursuant to the Procedures for the Administration of Section 5 (28 C.F.R. 51.32).

We have considered carefully the information you have submitted in support of the proposal, as well as information provided by other interested parties. We note that the change from at-large to single-member district elections has already met the Section 5 preclearance requirements. We note further that, although the terms of five of the current school board members expire in 1986, thus providing a perfect opportunity for the orderly implementation of the new precleared plan, including an election in the sole black-majority district where no incumbent resides, the proposed implementation plan provides that members will be elected from only three single-member districts, while two members again will be elected at large, by numbered positions.

On these terms, it would not be until 1988 that a large number of voters, including those residents in the newly created black majority district, will be allowed to enjoy the benefits of their opportunity under the precleared single-member plan to elect a candidate of their choice. The school district has

not presented any compelling nonracial justification for proceeding with implementation of the precleared plan on such a piecemeal basis. Indeed, the record before us indicates that the choices reflected in the proposed implementation plan were made in order to protect white incumbents now serving on the school board. Such an effort to preserve incumbencies under circumstances that appear designed to thwart, rather than ensure, full and prompt implementation of a precleared plan, cannot itself obtain preclearance unless and until the inference of racial animus is dispelled.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has no discriminatory purpose or effect. See Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.39(e)). In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that that burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the implementation schedule for the election of school board members from nine single-member districts for the Consolidated School District of Aiken County.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that this change has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. In addition, Section 51.44 of the guidelines permits you to request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the effect of the objection by the Attorney General is to make the implementation schedule for the election of school board members from nine single-member districts for the Consolidated School District of Aiken County legally unenforceable. 28 C.F.R. 51.9.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action the Consolidated School District of Aiken County plans to take with respect to this matter. If you

have any questions, feel free to call Ms. Lora L. Tredway (202-724-8388), Attorney/Reviewer of the Section 5 Unit of the Voting Section.

Sincerely,

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

:

DEC 1 1986

C. Havird Jones, Jr., Esq.
Assistant Attorney General
P. O. Box 11549
Columbia, South Carolina 29211

Dear Mr. Jones:

This refers to Act No. 536 (R632) (1986) which consolidates School District Nos. 1 and 3 into a single school district to be known as Dorchester County School District No. 4; changes the method of selecting trustees for School District No. 3 from election at large by residency district to appointment on an interim executive committee for two-year terms of office; decreases terms from four to two years for current trustees in School District No. 3; reduces the number of trustees for School District No. 3 from seven to three; provides that beginning in 1988 five trustees for School District No. 4 will be elected from single-member districts and two trustees will be appointed by the legislative delegation; provides that beginning in 1992 all seven trustees will be elected from single-member districts; provides for an implementation schedule; changes the filing period and advertisement requirements for elections; provides the procedures for filling vacancies on the interim executive committee; provides for a referendum requirement in order for School District No. 2 and proposed District No. 4 to consolidate; provides that School District No. 2 will bear its own election costs; provides for the filing of a written notice of candidacy with the county election commission for School District No. 2; and defines a polling place change for the Clemson Voting Precinct in Dorchester County, South Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. On September 30, 1986, we received the information to complete your submission which also included an additional polling place change not embodied in Act No. 536.

We have considered carefully the information you have provided, as well as that provided by other interested parties. With the exception of the composition of the interim executive committee for the newly consolidated School District No. 4, the voting changes embodied in Act No. 536 would appear to satisfy the Section 5 standards and the Attorney General interposes no objection to these changes, nor to the polling place change from the Industrial Building to Do-Rite's Lounge which is not embodied in Act No. 536. However, we feel a responsibility to point out that Section 5 of the Voting Rights Act expressly provides that the failure of the Attorney General to object does not bar any subsequent judicial action to enjoin the enforcement of such change. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.48).

With regard to the interim change which would result in a two-year appointed consolidated board, however, we note, at the outset, that because of legislation which was precleared in 1984 providing for elections, School District No. 3 has elected six blacks to a seven-member board of trustees for that district. Further, the information we have received suggests that the elected board of trustees for District No. 3 is composed of members who are expected to be accountable, and therefore responsive, to the concerns of a school system which is at least 66 percent black.

Under the proposed legislation the Dorchester County Board of Education will appoint three trustees from among the membership of District No. 3's board and four trustees from District No. 1 to serve on the interim committee. We have received expressions of concern that appointments to the interim board will diminish significantly the participation of blacks under the present system and we have sought unsuccessfully to obtain information on how such appointments will be made. Such information has yet to be provided and the state has not satisfactorily explained the extent to which the minority representation from the affected districts, particularly District No. 3, will be reflected on the interim body which will govern the consolidated constituencies for two years until the newly precleared method of election is to be implemented. We are, therefore, unable to conclude that this aspect of the proposed change will not have a prohibited retrogressive effect on the right of the minorities to be fairly represented on the board. See Beer v. United States, 425 U.S. 130 (1976).

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has no discriminatory purpose or effect. See Georgia v. United States, 411 U.S. 526 (1973); see also 28 C.F.R. 51.39(e). In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that that burden has been sustained with regard to the interim governing committee. Therefore, on behalf of the Attorney General, I must object to Act No. 536 to the extent that it provides for an appointed interim executive committee for the consolidated district at least until such time as the effects of that appointive process on minority representation on the committee can be determined.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that none of these changes has either the purpose or will have the effect of denying or abridging the right to vote on account of race or color. In addition, Section 51.44 of the guidelines permits you to request that the Attorney General reconsider the objection. Relevant information which would be a basis for a withdrawal would include the racial composition of the interim board. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the effect of the objection by the Attorney General is to make the interim implementation provisions of Act No. 536 (R632) (1986) legally unenforceable. 28 C.F.R. 51.9.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action the State of South Carolina plans to take with respect to this matter. If you have any questions, feel free to call Sandra S. Coleman (202-724-6718), Director of the Section 5 Unit of the Voting Section.

Sincerely,

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

DEC 29 1986

Mr. James H. Zorn, Jr.
Bamberg County Administrator
P. O. Drawer 149
Bamberg, South Carolina 29003

Dear Mr. Zorn:

This refers to the procedures for conducting the August 5, 1986, special primary vacancy election, including the election schedule, for the Democratic Party in Bamberg County, South Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received the information to complete your submission on October 30, 1986.

We have considered carefully all of the materials provided by you in support of your submission along with information available to us from other interested parties. We note that from the day the election was called until the holding of the August 5, 1986, primary election, there were only twenty-one days for potential candidates to qualify, organize contributors and volunteers, mount a campaign and mobilize potential voters. We are also aware that because of the abbreviated election schedule state law did not allow the registration books to be opened to provide for additional registration opportunities.

In addition, the results of the last regularly scheduled elections in Commissioner District 4 show that the Party was aware or should have been aware prior to adopting the proposed election schedule that the black candidate who lost that election by a narrow margin would be the most likely potential candidate for the vacancy created by the resignation of the District 4 incumbent this year. Furthermore, it would appear that the special primary election schedule is clearly at odds with state law requirements, which seem to mandate a minimum of eleven weeks from the occurrence of the vacancy to the holding of the primary. In fact, in this instance the election was held prior to the actual occurrence of the vacancy. No legitimate nonracial

reason has been provided as to why the election was held under such circumstances, which seem clearly to have disadvantaged the minority candidate who, as one might have expected, emerged as the candidate of the black voters' choice.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has no discriminatory purpose or effect. See Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.39(e)). In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that that burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the procedures for conducting the special primary election, including the election schedule.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that these changes have neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. In addition, Section 51.44 of the guidelines permits you to request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the effect of the objection by the Attorney General is to make the special primary election and election schedule legally unenforceable. 28 C.F.R. 51.9.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action the Bamberg County Democratic Party plans to take with respect to this matter. If you have any questions, feel free to call Sandra S. Coleman (202-724-6718), Director of the Section 5 Unit of the Voting Section.

Sincerely,

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

February 12, 1987

Ms. Faith Sellers
Chairperson, Dorchester County
Board of Education
111 West Fourth North Street
Summerville, South Carolina 29483

Dear Ms. Sellers:

This refers to your request for reconsideration of the December 1, 1986, objection to the appointed interim executive committee for the Consolidated School District in Dorchester County, South Carolina, provided for in Act No. 536 (R632) (1986), submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your request on January 21, 1987.

As we noted in our objection letter, the earlier failure of the Dorchester County Board of Education to make appointments to the proposed interim executive committee, or to provide us with information as to how those appointments would be made, did not permit us to preclear Act No. 536 to the extent that it provided for an interim executive committee, "at least until such time as the effects of that appointment process on minority representation on the committee" could be determined. According to information you now have provided, we understand that on January 15, 1987, the Dorchester County Board of Education acted to appoint seven members to the interim executive committee in such a way that the representation of the minority community will not be retrogressed. Therefore, pursuant to the reconsideration guidelines promulgated in Section 51.45 of the Procedures for the Administration of Section 5 (52 Fed. Reg. 496 (1987)), the objection to Act No. 536 is hereby withdrawn. However, we feel a responsibility to point out that Section 5 of the Voting Rights Act expressly provides that the failure of the Attorney General to object does not bar any subsequent judicial action to enjoin the enforcement of such change. See also Section 51.41 (52 Fed. Reg. 496 (1987)).

Sincerely,

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

MAY 22 1987

James B. Richardson, Jr., Esq.
Richardson and Smith
1338 Main Street
Columbia, South Carolina 29201

Dear Mr. Richardson:

This refers to the procedures for conducting the April 14, 1987, special election to elect school board trustees under a new method of election and the districting plan for the Edgefield County School District in Edgefield County, South Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received the information to complete your submission on April 14, 1987.

We have considered carefully the information you have provided, as well as comments from other interested parties, including the plaintiffs in Jackson v. Edgefield County School District (Civ. Action No. 85-709-3 (D.S.C.)). With regard to the procedures for conducting the April 14, 1987, special election, you have advised us that the school board's plans to hold that election were abandoned. Therefore, it would be inappropriate for the Attorney General to make any further determination with respect to this matter. See Sections 51.25 and 51.35 of the Procedures for the Administration of Section 5 (52 Fed. Reg. 493 and 495 (1987)).

With regard to the districting plan, we note at the outset that this endeavor stems from the court's order in Jackson which found the preexisting at-large election system violative of Section 2 of the Voting Rights Act and required the school district to devise a new election plan to remedy the violation. While the school district has sought to show that its proposed districting does this by providing blacks with an opportunity to elect candidates of their choice to office in four of the plan's seven districts, our analysis shows that this is not a valid assessment of the plan's impact. First of all,

the existence of racial bloc voting and other factors adversely affecting black participation in the electoral process in Edgefield County strongly suggest that blacks will have a realistic opportunity for electing candidates of their choice in only two of the school board's proposed districts. Secondly, the affected black constituency seems firmly to oppose the districting incorporated into the school district's proposal and our information is that the plaintiffs in the Jackson litigation and other blacks were afforded no input into the development of this plan. Rather, assertions that the school district's plan was drawn in a manner calculated to minimize black voting strength have come to our attention and seem supported by the fact that alternate configurations, which would observe the school district's stated nonracial criteria for drawing districts as well or better than the submitted plan, easily could have been drawn so as more effectively to provide the black population an equal opportunity to participate in the electoral process and to elect candidates of their choice to office. These assertions have not been adequately rebutted.

Under Section 5 of the Voting Rights Act the school district has the burden of showing that the submitted change is free of any discriminatory purpose and effect. See Georgia v. United States, 41 U.S. 526 (1973); Busbee v. Smith, 549 F. Supp. 454 (D. D.C. 1982), aff'd, 459 U.S. 1166 (1983). See also Section 51.52(a) (52 Fed. Reg. 497-498 (1987)). In view of the circumstances discussed above, I cannot conclude that that burden has been sustained in this instance. Accordingly, I must, on behalf of the Attorney General, object to the proposed districting plan which you have submitted.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that this change has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. In addition, Section 51.45 of the guidelines (52 Fed. Reg. 496-497 (1987)) permits you to request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the effect of the objection by the Attorney General is to make the districting plan legally unenforceable. See Section 51.10 (52 Fed. Reg. 492 (1987)).

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action the Edgefield County School District plans to take with respect to this matter. If you have any questions, feel free to call Sandra S. Coleman (202-724-6718), Director of the Section 5 Unit of the Voting Section.

Sincerely,

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

June 28, 1988

Emil Wald, Esq.
Spencer & Spencer
P. O. Box 790
Rock Hill, South Carolina 29731

Dear Mr. Wald:

This refers to twenty-two annexations (identified in Attachments A and B) to the City of Rock Hill in York County, South Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received the information to complete your submission on April 29, 1988.

We have considered carefully the information you have provided, as well as information received from other interested parties. Based on our review, the Attorney General does not interpose any objections to the three annexations (set forth in Attachment A) which do not include any population and which we understand are intended for nonresidential use. However, we feel a responsibility to point out that Section 5 of the Voting Rights Act expressly provides that the failure of the Attorney General to object does not bar any subsequent judicial action to enjoin the enforcement of such changes. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41).

With regard to the remaining nineteen annexations, we are unable to reach a similar conclusion. At the outset, we note that on December 12, 1978, the Attorney General interposed a Section 5 objection to a change submitted by the city to nonpartisan elections with a majority vote requirement. In interposing that objection, the Attorney General reviewed city election returns and found an apparent pattern of racially polarized voting. Subsequently, the city requested that the Attorney General reconsider the objection and, in its request, the city confirmed that racial bloc voting exists in Rock Hill. Our analysis of the returns for municipal elections held from 1979 to the present indicates that such polarized voting continues to play a significant role in municipal elections.

Under the current election system, three councilmembers are elected from districts and four (including the mayor) are elected at large. One of the districts is almost 90 percent black in population while the other two are approximately 90 percent white. Thus, the plan does offer black voters in the city some opportunity to elect candidates of their choice to the council. However, in the context of the pattern of polarized voting which appears to exist in the city, black voters have, at best, a very limited opportunity to elect any of the at-large councilmembers. Indeed, in the two three-seat, at-large elections held since the present election system was instituted, the lone black candidate in each primary was unable to attain any of the three available seats, despite receiving overwhelming black support. We are aware that one black was elected at large in the 1979/1980 elections; however, that candidate obtained the all-important Democratic nomination by a mere 17-vote majority in an election characterized by what appears to have been a disproportionately high turnout of black voters. Even this candidate subsequently was defeated for reelection in the 1981 Democratic primary for three at-large seats.

The effect of the nineteen annexations is to reduce the black population percentage of the city by 1.5 percentage points, a reduction that serves but to make it more difficult for blacks to elect a candidate of their choice to the at-large seats. We also understand that many of these annexed areas are slated for future residential development and that virtually all of the residents of these areas are expected to be white.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has no discriminatory purpose or effect. See Georgia v. United States, 411 U.S. 526 (1973); see also 28 C.F.R. 51.52(c). In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that the city has sustained its burden of showing that these annexations will not have a proscribed retrogressive effect. See Beer v. United States, 425 U.S. 130 (1976); City of Richmond v. United States, 422 U.S. 358, 370 (1975). Therefore, on behalf of the Attorney General, I must object to the nineteen annexations set forth in Attachment B.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that these changes have neither the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. In addition, Section 51.45 of the guidelines permits you to request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the effect of the objection by the Attorney General is to make the nineteen annexations legally unenforceable to the extent they affect voting. 28 C.F.R. 51.10.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action the City of Rock Hill plans to take with respect to this matter. If you have any questions, feel free to call Mark A. Posner (202-724-8388), Deputy Director of the Section 5 Unit of the Voting Section.

Sincerely,

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

ATTACHMENT A

Ordinance Number	Annexed Area
6-83	York Technical College #2
19-86	Bryant Field Annexation Addendum
4-88	Firetower Road

ATTACHMENT B

Ordinance Number	Annexed Area
2-82	Greenfield Acres
6-84	Country Club
13-85	Hunter's Chase
2-86	Shiland and Sharonwood Area I
3-86	Shiland and Sharonwood Area II
9-86	Bagwell Circle I
16-86	Bryant Field
22-86	Riverchase
23-86	Marett Boulevard
28-86	Westgate I
29-86	Westgate II
30-86	Tools Fork
51-87	Quiet Acres I
53-87	Pearson Road
54-87	Constitution Boulevard
66-87	Robertson Road
74-87	South Herlong Avenue/ Waddell-Rubin & Associates
3-88	Dave Lyle Boulevard I
5-88	Mt. Gallant Road I

S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

Emil W. Wald, Esq.
Spencer & Spencer
P. O. Box 790
Rock Hill, South Carolina 29731

OCT 18 1989

Dear Mr. Wald:

This refers to your request that the Attorney General withdraw the June 28, 1988, objection interposed under Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c, to 19 annexations to the City of Rock Hill in York County, South Carolina. This also refers to the following matters submitted under Section 5 by the City of Rock Hill: the change in the method of electing the city council from three councilmembers elected at large and three elected from single-member districts (with the mayor at large) to single-member districts (and the mayor at large); the districting plan; the adoption of nonpartisan elections with a majority vote requirement; the changes in the procedures for candidate qualifying; the candidate residency requirements; the change in the general election date and the specification of the date on which terms of office commence; the implementation schedule; and nine annexations (Ordinance Nos. 18-88, 34-88, 35-88, 36-88, 44-88, 46-88, 13-89, 28-89, and 29-89). We received your request for reconsideration on August 24, 1989. We received your submission of the change in method of election and related changes on July 25, 1989, and the submission of the nine additional annexations on August 24, 1989; supplemental information was received on September 15 and October 3, 1989.

We have considered carefully the information you have provided, as well as comments and information from other interested parties. Our analysis indicates that the proposed method of election, as implemented by the districting plan, "fairly reflects the strength of the [black] community as it

exists after the annexation." City of Richmond v. United States, 422 U.S. 358, 371 (1975). Accordingly, on behalf of the Attorney General, the objection interposed on June 28, 1988, to 19 annexations by the city is hereby withdrawn. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.48). In addition, the Attorney General does not interpose any objections to the other submitted changes. However, we feel a responsibility to point out that Section 5 of the Voting Rights Act expressly provides that the failure of the Attorney General to object does not bar any subsequent judicial action to enjoin the enforcement of changes which have received Section 5 preclearance.

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Washington, D.C. 20530

July 18, 1988

C. Havird Jones, Jr., Esq.
Assistant Attorney General
Public Interest Litigation
P. O. Box 11549
Columbia, South Carolina 29211

Dear Mr. Jones:

This refers to Act No. R296 (1987) which provides for a districting plan for School District No. 4 and the abolishment of the county board of education; and Act No. R293 (1987) which affects the powers and duties of the school boards and the county council in Dorchester County, South Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received the information necessary to complete your submission on May 17, 1988.

We have reviewed carefully all of the information that you have provided as well as that provided by other interested individuals and information already in our files. With regard to Act No. 296 (1987) which abolishes the county board of education, the Attorney General does not interpose any objection. However, we feel a responsibility to point out that Section 5 of the Voting Rights Act expressly provides that the failure of the Attorney General to object does not bar any subsequent judicial action to enjoin the enforcement of such change. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41).

With regard to the districting plan for Consolidated School District No. 4, we are unable to reach a similar conclusion. Before the county consolidated school district Nos. 1 and 3, black voters had attained significant representation in both of those districts, having elected six of the seven members on the board of School District No. 3 and three of the seven members on the board of School District No. 1. Since the consolidation, the interim appointed board for the consolidated district is composed of four black members and three white members. However, the proposal for the consolidated school board which is to be elected in 1988 includes a districting plan in which only two of the five districts will afford black voters a realistic opportunity to

elect representation of their choice to office. Assuming the likelihood that one of the two appointed members will be black, the county's proposal nevertheless would reduce minority representation from four of seven members to three of seven members under circumstances which do not fully explain why such a reduction is necessary. Even though we have noted the county's assertion that this plan is the best that can be drawn without crossing Census enumeration district lines, our analysis suggests otherwise. Nor are we satisfied that the inability to conform to existing enumeration district lines provides an adequate justification for the retrogression of black voting strength in the present circumstances. See Beer v. United States, 425 U.S. 130 (1976).

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that submitted voting changes have no discriminatory purpose or effect. See Georgia v. United States, 411 U.S. 526 (1973); see also 28 C.F.R. 51.52(a). In view of the observations noted above, I cannot conclude that the county has carried its burden. Accordingly, I must, on behalf of the Attorney General, interpose an objection to Act No. R296 (1987), to the extent that it provides for the districting plan.

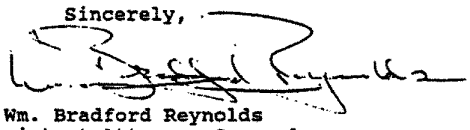
Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that these changes have neither the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. In addition, Section 51.45 of the guidelines permits you to request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the effect of the objection by the Attorney General is to make the districting plan legally unenforceable. 28 C.F.R. 51.10.

With reference to Act No. 293 (1987), we cannot find a basis under Section 5 to object to the transfer of fiscal authority to the county council in light of our clearance of Act No. 296 (1987). At the same time, we are troubled by assertions that the county council's previous exercise of fiscal responsibility has been unresponsive to the needs of the

predominantly black school districts. Under Section 2 of the Voting Rights Act, any such behavior in the future by the council could well warrant close scrutiny to ascertain whether the transfer of fiscal authority has "result[ed]" in discrimination. That judgment must, of course, await the future action of the county council.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action Dorchester County plans to take with respect to this matter. If you have any questions, feel free to call Sandra S. Coleman (202-724-8388), Director of the Section 5 Unit of the Voting Section.

Sincerely,



Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Voting Section
P.O. Box 66128
Washington, D.C. 20035-6128

SEP 23 1988

C. Dennis Aughtry, Esq.
County Attorney
1701 Main Street
Suite 405
Columbia, South Carolina 29202

Dear Mr. Aughtry:

This refers to Ordinance No. 3 (1973), Ordinance No. 174 (1975), Section 4-1117, Ordinance No. 1446-86 (1986) and Ordinance No. 1553-86 (1986), as each applies to the political activity of county employees for Richland County, South Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received the information to complete your submission on July 25, 1988.

We have considered carefully all of the information provided with your submission as well as that from other interested parties. In making our determination it will be helpful to recount the history of the changes before us.

In 1973, Richland County passed Ordinance No. 3, which prohibited full-time county employees from particpating in political activity. In 1975 Ordinance No. 174 was passed that provided that dismissal for participation in political activity would preclude re-employment with the county. Subsequently, Section 4-1117 was passed requiring that full-time nonelected employees of the county take a leave of absence to run for political office.

In 1979, the Attorney General precleared Ordinance No. 502-78, which deleted a portion of Section 4-1117 regarding the Federal Hatch Act, and superseded the 1973 political activity restrictions. This ordinance, however, maintained the language requiring full-time, nonelected county employees to take a leave of absence to run for political office.

In 1986, the Richland County Council passed Ordinance No. 1446-86 which required all full-time and part-time county employees to resign their employment to run for political office. Ordinance No. 1446-86 exempted nonpartisan and nonsalaried elected offices from this requirement.

In December of 1986, the Richland County Council passed Ordinance No. 1553-86, which deleted the exempted language for nonpartisan and nonsalaried elected offices from Ordinance No. 1446-86. This ordinance also contained a section requiring that any employee dismissed for political activity cannot be re-employed by the county. Another section of Ordinance 1553-86 prohibited the illegal use of influence by county employees to intimidate or coerce an individual to vote for a particular candidate.

At the outset, we note that the United States Supreme Court has determined that a change which affects employee political activity is a change in a standard, practice, or procedure which affects voting within the meaning of the Voting Rights Act and, thus, is subject to Section 5 scrutiny. See Dougherty v. White, 439 U.S. 32 (1978). Accordingly, all of the changes enumerated above are properly before us for review. However, it appears that the 1973 political activity provisions and Section 4-1117 were superseded by the provisions of Ordinance No. 502-78 which was precleared in 1979. Thus, no further determination relative to those changes is appropriate or required.

Regarding to the other political activity provisions, with the exception of the requirement that a county employee resign to run for office, the Attorney General does not interpose any objections. However, we feel a responsibility to point out that Section 5 of the Voting Rights Act expressly provides that the failure of the Attorney General to object does not bar any subsequent judicial action to enjoin the enforcement of such changes. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41).

With regard to the resignation requirement, we note from 1980 Census data that blacks constitute approximately 39 percent of the population of Richland County. According to information provided by the personnel department of Richland County, blacks constitute approximately 31 percent of the employees of Richland County. In addition, the 1980 Census data and data from the county concerning

salaries of county employees lend support to the concerns expressed by some that the resignation requirement will operate as an economic disincentive which will impact more heavily on the black potential candidates than on the white potential candidates. This burden will in turn significantly affect black voters in Richland County because it limits the pool of potential candidates likely to be the choice of the black constituency.

An additional concern raised by information received from black and white county residents is that the 1986 change requiring resignation was designed to inhibit potential black candidates. A change cannot be precleared if it is tainted with an invidious racial purpose. City of Richmond v. United States, 422 U.S. 358 (1975); Busbee v. Smith, 459 U.S. 1166 (1983), aff'g mem. 549. F. Supp. 494 (D. D.C. 1982).

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has no discriminatory purpose or effect. See Georgia v. United States, 411 U.S. 526 (1973); see also 28 C.F.R. 51.52. Under the circumstances involved here, I am unable to conclude, as I must under the Voting Rights Act, that these provisions are free of the proscribed purpose and effect. Therefore, on behalf of the Attorney General I must object to the provisions now before us which require the resignation of full-time and part-time county employees running for office.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that these changes have neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. In addition, Section 51.45 of the guidelines permits you to request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the effect of the objection by the Attorney General is to make these political activity provisions legally unenforceable. 28 C.F.R. 51.10.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action Richland County plans to take with respect to this matter. If you have any questions, feel free to call Sandra S. Coleman (202-724-6718), Deputy Chief of the Voting Section.

Sincerely,

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

JUN 13 1989

Mr. Paul S. Paskoff
City Administrator
P.O. Box 1149
Lancaster, South Carolina 29720

Dear Mr. Paskoff:

This refers to the change in the method of electing the city council from seven members, including the mayor, elected at large by plurality vote to six members elected from single-member districts by plurality vote and three members, including the mayor, elected at large by plurality vote to staggered terms (5-4); an increase in the number of councilmembers from seven to nine; the implementation schedule; and the districting plan for the City of Lancaster in Lancaster County, South Carolina submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received the information to complete your submission on April 14, 1989.

We have considered carefully the information and materials you have supplied, along with information available to us from other interested parties, our files, and the Bureau of the Census. At the outset, we note that even though black persons constitute over 41 percent of the city's population, at no time has the seven-member city council included more than one black member, a circumstance that appears to be due largely to a pattern of racially polarized voting in municipal elections. We further note that the process leading to adoption of the proposed changes began with the development of election plans based on the existing number of councilmembers. One such plan featured six single-member districts and the at-large election of a mayor, a system referred to as the 6-0-1 plan. With three black-majority districts, that plan ostensibly would provide

black voters with the opportunity to elect 43 percent of the council representation which, in turn, would essentially mirror the black percentage of the city's population. It appears that the idea of expanding the size of the council to include two at-large members occurred subsequent to the development of this 6-0-1 system and, indeed, much of our information indicates that such increase in minority voting strength was a major motivation for the adoption of the alternative 6-2-1 system. In that regard, it is noteworthy that the preferences as between the 6-0-1 and 6-2-1 systems appear to have been exercised along racial lines and that the proposed changes were adopted over the recommendation of the state's expert demographer and in spite of virtually unanimous black opposition.

Information available to us further suggests that another major consideration in deciding to expand the council size and incorporate two at-large seats was to protect incumbent white councilmembers. While preservation of incumbency is not necessarily an inappropriate consideration, it cannot be accomplished at the expense of minority voting potential. Where, as here, the mechanism employed to preserve incumbencies serves to limit or deny the affected minority an equal opportunity to elect candidates of their choice, it is not necessary to distinguish "discrimination based on an ultimate objective of keeping certain incumbent whites in office from discrimination borne of pure racial animus." Ketchum v. Byrne, 740 F.2d 1398, 1408 (7th Cir. 1984).

We recognize that the city has stated that the primary reason for incorporating the two at-large seats in the 6-2-1 system is to provide representation to the 30.4 percent of minorities who allegedly reside in white-majority districts under the proposed districting plan. Correctly calculated, however, the data you have provided establish that only 487 or 12 percent of the city's 4,019 black citizens reside in the three white-majority districts. To date, the city has failed to provide any other legitimate, nonracial reason for expanding the size of the council by adding two at-large members.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has no discriminatory purpose or effect. See Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.52(c)). In satisfying its burden, the submitting authority must demonstrate that the proposed changes are not tainted, even in part, by an invidious racial purpose; it is insufficient simply to establish that there are some legitimate, nondiscriminatory reasons for the voting changes. See Village of Arlington Heights v. Metropolitan Housing Development Corp., 429 U.S. 252, 265-66 (1977); City of Rome v. United States, 422 U.S. 156, 172 (1980); Busbee v. Smith, 549 F. Supp. 494, 516-17 (D.D.C. 1982), aff'd 459 U.S. 1166

(1983). In light of the circumstances discussed above, I cannot conclude, as I must under the Voting Rights Act, that the city has sustained its burden in this instance. Therefore, on behalf of the Attorney General, I must object to the election method changes proposed herein for the City of Lancaster.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that these changes have neither the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. In addition, Section 51.45 of the guidelines permits you to request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the method of election changes adopted under the city's December 13, 1988, Ordinance No. 88-40 remain legally unenforceable. 28 C.F.R. 51.10.

Because the submitted implementation schedule was established to implement the objected-to changes, the Attorney General is unable to make a determination with regard to it. 28 C.F.R. 51.35.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action the City of Lancaster plans to take with respect to these matters. If you have any questions, feel free to call Ms. Lora Tredway (202-724-8290), an attorney in the Voting Section.

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

July 18, 1989

Mr. John P. Perry
Beaufort County Administrator
P. O. Drawer 1228
Beaufort, South Carolina 29901-1228

Dear Mr. Perry:

This refers to the change in the method of electing county councilmembers from two-year, concurrent terms to four-year, staggered terms; the method of staggering; and the implementation schedule for Beaufort County, South Carolina. We received the information to complete your submission on May 19, 1989.

Section 5 of the Voting Rights Act places upon the submitting authority the burden of showing that the voting changes do not have a racially discriminatory purpose or effect. See, e.g., Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.52 (a)).

Regarding the change to four-year terms, the Attorney General does not interpose any objection to the change in question. However, we feel a responsibility to point out that Section 5 of the Voting Rights Act expressly provides that the failure of the Attorney General to object does not bar any subsequent judicial action to enjoin the enforcement of such change. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41).

With regard to the method of staggering the councilmembers, we are unable to conclude that the county has met its burden of showing that this change is free of a discriminatory effect. Under the county's method of staggering, elections for the three at-large seats on the county council would no longer be concurrent, but would be staggered one-two. In past elections for the at-large seats, racial bloc voting has been prevalent and blacks have relied on single-shot voting. Depending on the number of candidates in the future, it is conceivable that, with the retention of concurrent election of the three at-large seats, blacks could elect the candidate of their choice to one of those seats. However, the effect of the staggering would be virtually to eliminate that

possibility, because the staggering would reduce or negate the effectiveness of single-shot voting. A similar conclusion applies to the effect of staggering the three seats of the Beaufort District.

In view of the circumstances outlined above, we are unable to conclude that the county has met its burden of showing that the method of staggering would not have retrogressive effect. See Beer v. United States, 425 U.S. 130, 141 (1976). Accordingly, on behalf of the Attorney General, I must interpose an objection to the county's method of staggering.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the change neither has the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. In addition, Section 51.45 of the guidelines permits you to request the Attorney General to reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the effect of the objection by the Attorney General is to make the proposed method of staggering legally unenforceable. 28 C.F.R. 51.10.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action Beaufort County plans to take with respect to this matter. In that regard, we should advise you that, during the course of our review of the instant submission, we received allegations that, wholly apart from the submitted changes, the election system in Beaufort County violates Section 2 of the Act, since it results in an abridgement of the right of black persons to participate equally in the electoral process and elect candidates of their choice to office. You should be aware that we are undertaking a review of those concerns and will be in contact with you to discuss that matter further.

If you have any questions, feel free to call David Marblestone (202-724-3113), Attorney, Voting Section.

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

February 2, 1990

Roy D. Bates, Esq.
Bonham Center, Suite A-200
914 Richland Street
Columbia, South Carolina 29201

Dear Mr. Bates:

This refers to the change in the method of electing the city council from at large to single-member districts, the districting plan, and the election schedule for implementing the election method change, adopted pursuant to the Consent Judgment and Decree in the consolidated cases of NAACP v. City of Bennettsville, No. 4:89-1655-2; and United States v. City of Bennettsville, No. 4:89-2363-2 (D.S.C. November 27, 1989), and the adoption of four-year, staggered terms, for the City of Bennettsville in Marlboro County, South Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your submission on January 17, 1990.

The Attorney General does not interpose any objections to the change in method of election, the districting plan, and the change to four-year, staggered terms. However, we feel a responsibility to point out that Section 5 of the Voting Rights Act expressly provides that the failure of the Attorney General to object does not bar any subsequent judicial action to enjoin the enforcement of such changes. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41).

With respect to the proposed election schedule, under which the new method of election will be implemented at the next regularly scheduled municipal election in April 1991, we are unable to make a similar determination. At the outset, we note that the city does not contest that under Section 2 of the Voting Rights Act, 42 U.S.C. 1973, a prima facie case exists that the current at-large method of election denies black citizens an equal opportunity to participate in the political process and elect candidates of their choice to office. Accordingly, it is incumbent upon Bennettsville to effectuate the transition to a nondiscriminatory method of election as expeditiously as possible to ensure that the remedy "will so far as possible eliminate the discriminatory effects of the past as well as bar like discrimination in

the future." Louisiana v. United States, 380 U.S. 145, 154 (1965).

In that regard, prior to the entry of the Consent Judgment and Decree and the adoption of the submitted changes, the city represented that it was feasible to implement the remedial plan in a special election to be conducted during the first half of this year, and that the city intended to adopt such a course of action. This is in accord with the approach taken in other Section 2 cases where special election relief has been ordered. See, e.g., Neal v. Coleburn, 689 F. Supp. 1426 (E.D. Va. 1988); Ketchum v. City Council, 630 F. Supp. 551 (N.D. Ill. 1985). See also United States v. City of Cambridge, 799 F.2d 137 (4th Cir. 1986). To assist in the scheduling of such a special election, we assured the city in a December 29, 1989, letter that we were fully prepared to give expedited Section 5 consideration to the new election plan.

In spite of this assurance, the city now has advised us that an election this spring is impracticable because of the necessity of a Section 5 review, and because of state law requirements which principally involve giving 60 days notice of the election. The city further advises us that a municipal election could not be scheduled to coincide with the regularly scheduled June 12, 1990, county election because of limited space available at the polling places and potential voter confusion. However, we have been advised that the polling places are large enough to accommodate a joint election, which it appears could be adequately administered by trained poll officials.

More broadly, the city's decision to postpone the implementation of the single-member district method of election appears to echo the efforts the city has made to avoid allowing its black residents a full and equal opportunity to elect representatives of their choice. Thus, although the city essentially concedes that the at-large system is racially discriminatory, prior to the filing of the complaints in the Section 2 lawsuits the city resisted numerous efforts by the black community to obtain a fair method of election. Requests for a change were met by delay, by a proposal to amend the at-large system to add residency districts (thus eliminating the electoral opportunity available to black voters by single-shot voting), and, when a referendum finally was held on a mixed district and at-large method of election, the city prepared ballot language which created significant voter confusion and which a state court found was in violation of state law. And now that the adoption of a fair election plan has been mandated through judicial action, the city is attempting to delay the opportunity for voters in the city to elect representatives under that plan based upon deliberations from which the black community was excluded.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. See Georgia v. United States, 411 U.S. 526 (1973); see also 28 C.F.R. 51.52. In view of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that this burden has been sustained with regard to purpose. In addition, our guidelines require that preclearance be withheld if "necessary to prevent a clear violation of amended Section 2." 28 C.F.R. 51.55(b)(2). In the circumstances presented here, where black citizens have been denied an equal opportunity to participate in the political process and the holding of a special election imposes no undue burden, Section 2 provides an additional basis for withholding preclearance of the proposed election schedule. For these reasons, then, I must, on behalf of the Attorney General, interpose an objection to this aspect of your submission.

We note that the Consent Judgment and Decree requires that if the requisite preclearance is not obtained, the parties shall so advise the Court within seven days, and submit proposals for further proceedings as appropriate. Accordingly, please advise us within five days of the course of action the City of Bennettsville plans to take with respect to this matter. Should the city propose to promptly conduct a special election to implement the precleared method of election, we are prepared to give such a proposal immediate review under Section 5.

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General *Washington, D.C. 20530*

February 5, 1990

J. Kennedy DuBose, Jr., Esq.
Kershaw County Attorney
P. O. Drawer 39
Camden, S.C. 29020

Dear Mr. DuBose:

This refers to the change in the method of filling school board vacancies and the advisory referendum procedures for the Kershaw County School District in Kershaw County, South Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your submission on January 12, 1990.

We have given careful consideration to the information provided in your submission as well as information received from other sources. In view of the fact that the runoff portion of the advisory referendum is scheduled for February 6, 1990, and that litigation has now been instituted challenging this referendum as being in violation of Section 5 of the Voting Rights Act, we have accelerated our review of your submission.

We note that under current law, the County Council is directed to fill vacancies on the Kershaw County School District by appointment without the need for any referendum, advisory or mandatory. We also understand that on all previous occasions, appointments have been made promptly without resort to any referenda. On this occasion, however, the county has departed from longstanding practice, first by delaying the appointment for a considerable time, and then deciding that the vacancy should be filled after the voters of the county have an opportunity to indicate their preference in a county-wide referendum. The council further decided that the preference of county voters be determined by who among the candidates for the position received a majority of the votes cast.

We understand that one of the leading candidates for appointment to fill this vacancy is black and that this person finished first in the initial referendum, but failed to obtain a majority of the votes cast. We have received allegations that the county council adopted this advisory referendum procedure to avoid appointing this person to the vacancy, trusting that the at-large election procedure and majority vote requirement would have the effect of defeating this candidate. We are aware that this system, when employed in regular school district elections, has failed to result in black representation on the school board commensurate with their voting strength in the county. The information in your submission does not address this allegation and provides little information that would explain why the county council adopted the unusual and time consuming procedure it has chosen.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has no discriminatory purpose or effect. See Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.52). In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that that burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the submitted changes.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that this change has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. In addition, Section 51.45 of the guidelines permits you to request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the submitted changes continue to be legally unenforceable. 28 C.F.R. 51.10.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action Kershaw County School District plans to take with respect to this matter. If you have any questions, feel free to call Sandra S. Coleman (202-724-6718), Deputy Chief of the Voting Section.

Please note that by separate letter of this date, the Attorney General interposed no objection to the procedures for conducting the February 6, 1990, bond election in the Kershaw County School District. Nothing herein should be construed to affect the validity of those procedures under Section 5. In view of the pending litigation, we are providing a copy of this letter to the court.

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

April 23, 1990

C. Havird Jones, Jr., Esq.
Assistant Attorney General
Public Interest Litigation
P.O. Box 11549
Columbia, South Carolina 29211

Dear Mr. Jones:

This refers to Act No. R193 (1989) which provides for an increase in the number of board members from seven to nine, the change in method of election from seven members elected at large by numbered positions and residency districts to three members elected from three single-member districts and six members elected from two multimember districts without numbered positions or sub-residency districts, the districting plan, the change in the method of staggering the terms, and the implementation schedule for the board of education in Anderson County, South Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received the information to complete your submission on February 20, 1990.

The Attorney General does not interpose any objection to the increase in the number of board members from seven to nine. However, we feel a responsibility to point out that Section 5 of the Voting Rights Act expressly provides that the failure of the Attorney General to object does not bar any subsequent judicial action to enjoin the enforcement of such change. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41).

With regard to the remaining changes, we have considered carefully the information you have provided, as well as information from other interested parties and from the 1980 Census. At the outset we note that the election results provided by the county indicate that racially polarized voting exists in Anderson County, and, as a result, black voters likely are unable to participate equally in the electoral process and elect candidates of their choice to office unless they constitute the majority of the population of an electoral district.

In that regard, under the proposed districting plan, black voters do not constitute a majority in any of the districts even though the black population is sufficiently large and geographically concentrated in and around the City of Anderson to permit the drawing of a black majority district. However, the county school district chose to submerge this black population concentration into a larger white electorate by placing it in a multimember district (proposed District 5) which will elect four members to the school board. To date, the county has offered no legitimate nonracial reason for providing that three of the five districts will be single-member districts while declining to draw single-member districts in the area of the county where the principal black population concentration is located.

Moreover, the proposed districting plan has a total deviation of 51 percent. While this is not a matter of primary concern under Section 5 if a plan otherwise fairly reflects minority voting strength, we note it here simply because our analysis indicates that readily discernible alternative single-member district plans, which would remedy this malapportionment, would include at least one district with a realistic black majority.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. See Georgia v. United States, 411 U.S. 526 (1973); see also 28 C.F.R. 51.52. In addition, a submitted change may not be precleared if its implementation would lead to a violation of Section 2 of the Voting Rights Act. 28 C.F.R. 51.55(b). In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that the proposed method of election and the districting plan under review meet these preclearance standards. Therefore, on behalf of the Attorney General, I must object to the proposed method of election and the districting plan.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that these changes have neither the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. In addition, Section 51.45 of the guidelines permits you to request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the unprecleared changes continue to be legally unenforceable. 28 C.F.R. 51.10.

With regard to the method of staggering the terms of office and the implementation schedule, the Attorney General is unable to make any determination since these changes are interrelated with the objectionable changes. 28 C.F.R. 51.22(b).

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action that Anderson County and the county school board plan to take with respect to this matter. If you have any questions, feel free to call Lora L. Tredway (202-724-8290), an attorney in the Voting Section. Refer to File Nos. Y9605-9606, Z1815-1816, and Z7433 in any response to this letter so that your correspondence will be channeled properly.

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General *Washington, D.C. 20530*

MAY 31 1990

James E. Gonzales, Esq.
Gonzales & Gonzales
P.O. Box 10453
North Charleston, South Carolina 29411

Dear Mr. Gonzales:

This refers to the districting plan for the City of North Charleston in Charleston, Berkeley, and Dorchester Counties, South Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received the information to complete your submission on May 1, 1990.

We have considered carefully the information you have provided as well as comments and information received from other interested parties. At the outset, we note that since its incorporation in 1972, the city has been governed by an at-large elected city council, consisting of six councilmembers and the mayor. Under this system only one black person has been elected to city office although blacks constitute about a third of the city's population and numerous black candidates have offered for election. The city concedes in this submission that municipal elections are characterized by racially polarized voting and that, as a result, the current at-large method of election does not allow black voters an equal opportunity to elect candidates of their choice. Nevertheless, the city council made no effort to change the at-large system, until it was obliged to adopt a districting plan after local citizens initiated the change through a referendum election in order to obtain fair representation for the city's black residents.

In the plan proposed by the city council for electing the new eleven-member council, blacks constitute majorities in two of the ten proposed single-member districts. In the context of the prevailing pattern of polarized voting, the city concedes that black voters will have an opportunity to elect councilmembers only in those two districts. Thus, blacks will have a realistic opportunity to elect candidates of their choice to two of the eleven seats on the council. While such a change satisfies the

nonretrogression standard of Section 5, Beer v. United States, 425 U.S. 130 (1976), it also is necessary that the change be free of any discriminatory purpose. City of Richmond v. United States, 422 U.S. 358 (1975); Busbee v. Smith, 549 F. Supp. 494 (D.D.C. 1982), sum. aff'd, 459 U.S. 1166 (1983).

Our analysis indicates that districting options were readily available to the city which would allow for one or more additional black majority districts and thus would more fairly reflect black voting strength. Two aspects of the city's plan are implicated in this regard. First, the plan appears to minimize black electoral opportunity by fragmenting black neighborhoods, located in the southern area of the city, into white majority districts where blacks will not have an opportunity to elect councilmembers of their choice. Second, the city chose to combine the military base populations exclusively with white majority areas, although the base populations also adjoin the city's black neighborhoods and could as easily be combined with those neighborhoods to result in districts in which black voters are in the majority since, as we understand it, this military population is largely inactive in the local electoral process.

Our review has not indicated any valid, nonracial justification for unnecessarily limiting black voters to a realistic opportunity to elect representatives of their choice in only two districts. We understand that a primary goal of the districting plan is the city's apparent desire to preserve incumbencies. Although this goal does not, by itself, raise concern under the Voting Rights Act, it appears that the devices employed here to accomplish that goal were inextricably linked to minimizing black voting strength. See Ketchum v. Byrne, 740 F.2d 1398, 1408 (7th Cir. 1984), cert. denied, 471 U.S. 1135 (1985). Finally, we note that while the city was under significant time pressure to adopt a districting plan, the city sought to meet the deadline by adopting a plan through a closed process which did not permit fair and open debate about the available districting alternatives, and foreclosed serious consideration of the views of minority residents.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. See Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.52). In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that the city has carried its burden in this instance. Therefore, on behalf of the Attorney General, I must object to the submitted districting plan.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that this change has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. In addition, Section 51.45 of the guidelines permits you to request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the submitted change continues to be legally unenforceable. 28 C.F.R. 51.10.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action the City of North Charleston plans to take with respect to this matter. If you have any questions, feel free to call Mark A. Posner (202-724-8388), an attorney in the Voting Section.

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

MAY 7 1990

Tyre Douglas Lee, Jr., Esq.
City Attorney
P. O. Box 56
Chester, South Carolina 29706

Dear Mr. Lee:

This refers to the candidate filing fees for city council and mayor for the City of Chester, in Chester County, South Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received the information to complete your submission on March 9, 1990.

We have carefully considered the information you have provided as well as information from the Census and other interested parties. We note that candidates in city elections were not required to pay any filing fee prior to 1981 when the city council adopted candidate filing fees of $150.00 for a city council position and $250.00 for mayor. These fees amount to over 6% of the annual salaries of the offices in question. Moreover, the city made no provision for any alternative means of securing a place on the ballot for those unable to pay the filing fee.

Census data reveal that black persons in the City of Chester have income levels far below those of white persons. These figures suggest that the city's filing fees would have a disproportionate impact on black citizens who desire to become candidates for city office. Indeed, in holding that Texas' filing fee system violated the Fourteenth Amendment the Supreme Court pointed out "the obvious likelihood that this [filing fee] limitation would fall more heavily on the less affluent segment of the community." Bullock v. Carter, 405 U.S. 134, 144 (1972). Since, as our analysis indicates, elections for city office are characterized by racial bloc voting, the limitation on black candidacies occasioned by the high filing fees serves to limit the choices available to black voters, thus reducing the opportunity of minority voters to elect candidates of their choice.

The city has presented no overriding governmental interest supporting the submitted filing fee requirement and none is apparent. Similarly sized cities near Chester have much lower fees (e.g., Lancaster: $50 for mayor; $35 for council), or no fees at all (e.g., Camden and Union). The city's asserted interest that candidates, not taxpayers, should pay the costs of elections was found to be unconstitutional. See Bullock v. Carter, 405 U.S. at 144-149. There would also appear to be a constitutional question regarding Chester's filing fee requirement since no comparable alternative method of ballot access is made available for those unable to pay the filing fee. See Lubin v. Panish, 415 U.S. 709 (1974).

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has no discriminatory purpose or effect. See Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.52). In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that the city has carried its burden in this instance. Therefore, on behalf of the Attorney General, I must object to the candidate filing fees imposed by the City of Chester.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that this change has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. In addition, Section 51.45 of the guidelines permits you to request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the submitted change continues to be legally unenforceable. 28 C.F.R. 51.10.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action the City of Chester plans to take with respect to this matter. If you have any questions, feel free to call George Schneider (202-724-8385), an attorney in the Voting Section.

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

AUG 10 1990

William M. Brice, Jr., Esq.
City Attorney
P. O. Drawer 300
York, South Carolina 29745

Dear Mr. Brice:

This refers to the change in the method of electing the city council from at large to six members elected from single-member districts and the mayor elected at large, the districting plan, and the implementation schedule for the City of York in York County, South Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received the information to complete your submission on June 11, 1990.

We have considered carefully the information you have provided as well as comments received from other interested parties. At the outset, we note that under the existing at-large method of election only three blacks have been elected to the city council since the enactment of the Voting Rights Act 25 years ago, despite numerous candidacies by black residents of York. Our analysis indicates that in large part this is the product of a pattern of racially polarized voting in municipal elections. Accordingly, the adoption of a single-member district method of election, as ratified by the 1989 referendum, clearly enhances the potential of black voters to obtain an equal opportunity to participate in the political process and elect candidates of their choice, and seems in no way to be encumbered by a proscribed purpose. The Attorney General, therefore, does not interpose any objection to this change. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41).

With respect to the districting plan adopted by the city to implement the new method of election, however, we cannot reach a similar conclusion. Where a districting plan is drawn to implement a newly approved single-member district system, the submitting authority has the burden of showing that the plan is

free of discriminatory purpose, in addition to having no discriminatory effect. See Busbee v. Smith, 549 F. Supp. 494 (D.D.C. 1982), sum. aff'd, 459 U.S. 1166 (1983); 28 C.F.R. 51.52. This analysis requires "a sensitive inquiry into such circumstantial and direct evidence of intent as may be available." Village of Arlington Heights v. Metropolitan Housing Development Corporation, 429 U.S. 252, 266 (1977). In this regard, we note a number of significant factors.

First of all, city officials have acknowledged that the number of black majority districts should reflect the black percentage of the city population, yet refused to accord any weight to the consensus view that the black proportion of the population has increased significantly since the 1980 Census. Secondly, the city takes the position that the calculation of minority representation should be undertaken without regard to the mayor's vote on the council, thus positing a six-member council when in fact the city is governed by a council of seven members. Thirdly, superimposed upon the entire districting debate have been unfortunate comments by some expressing overt hostility to the effort of blacks to gain an equal opportunity to participate effectively in the city's political process. Thus, we note, especially, those comments of present and former city officials suggesting that blacks should be relegated to some limited role in city government.

In light of the considerations discussed above, then, I cannot conclude, as I must under the Voting Rights Act, that the city's burden has been sustained with regard to the districting presently under review. Therefore, on behalf of the Attorney General, I must interpose an objection to the districting plan.

We hasten to add, however, that nothing we say here should be taken as a suggestion that the city is under an obligation to adopt any particular plan. Rather, our concern is that the city adopt a plan which fairly reflects the voting potential of its black constituency.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the change to which we have objected has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. In addition, Section 51.45 of the guidelines permits you to request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the districting plan continues to be legally unenforceable. 28 C.F.R. 51.10. Also, since the implementation schedule is directly related to the districting plan, no determination is appropriate with respect to that change at this time. 28 C.F.R. 51.35.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action the City of York plans to take with respect to this matter. We stand ready to work with you and other city officials to bring about compliance with Section 5 of the Voting Rights Act. In this regard, we are prepared to give any newly-adopted districting plan expedited review to allow the city an opportunity to conduct elections under a racially fair plan at the earliest possible date. If you have any questions about this matter, feel free to call Mark A. Posner (202-307-1388), an attorney in the Voting Section.

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

October 15, 1990

C. Havird Jones, Jr., Esq.
Assistant Attorney General
Public Interest Litigation
P. O. Box 11549
Columbia, South Carolina 29211

Dear Mr. Jones:

This refers to Act No. 678 (1988) which changes the qualifications to serve as a probate judge from an elector in the county to an elector who is (1) 21 years old and (2) has a four-year college degree or has four years' experience as an employee in a probate judge's office in the State of South Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received the information to complete your submission on August 14, 1990.

At the outset we note that currently the sole qualification for a person to be a candidate for the position of probate judge in South Carolina is that a person be a registered voter. Presently, 26 percent of the registered voters in the state are black, according to our information. The state now proposes to change those qualifications so that a person must be 21 years of age and either possess a degree from a four-year college or at least four years' experience working in a probate judge's office. According to the 1980 census, there are 232,629 persons who have completed four or more years of college, and of this number only 28,771 (12%) are black. Thus, the four-year college degree requirement would reduce the percentage of black citizens who meet the qualification to run for the office of probate judge by 14 percent. Requiring that persons who wish to run for the office of probate judge demonstrate that they have completed four years of college, therefore, would appear to have a disparate impact on black citizens of the state.

The optional qualification criterion proposed under Act No. 678, four years of experience in a probate judges's office, would have a similar effect. Only 2 of 46 (4%) probate judges in the state are black, and only 17 percent of the employees working in probate judges' offices throughout the state are black. Furthermore, more than half of the state's counties have no black employees in the probate judge's office. In the 12 South Carolina counties which have a black majority population, where black voters would seemingly have the greatest prospect of electing a candidate to the county-wide office of probate judge, 7 of those counties (Allendale, Calhoun, Clarendon, Fairfield, Hampton, Lee, and Marion) have no black employees. Thus, the optional criterion of four years of employment in the probate judge's office, rather than providing to black voters a potentially less restrictive source of candidates of their choice, would appear to operate like a "grandfather clause" by expanding further the available pool of white potential candidates.

While we recognize the state's interest in establishing reasonable qualifications for those who are to hold office, especially those of the nature here, it cannot do so in a manner which weighs disparately upon its black constituents, absent a convincing reason. See Dougherty County Board of Education v. White, 439 U.S. 32, 42 n.12 (1978). Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has no discriminatory purpose or effect. See Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.52). We are not yet persuaded that the state's legitimate interest cannot be met through other means which do not produce the "undesirable racial effect[]" of the qualifications proposed. See Wards Cove Packing Co. v. Atonio, 109 S. Ct. 2115 (1989). In light of the considerations considered above, I cannot conclude, as I must under the Voting Rights Act, that the state's burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the implementation of the changed qualifications to serve as probate judge as defined in Act No. 678.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that this change has neither the purpose nor will have the effect of

denying or abridging the right to vote on account of race or color. In addition, Section 51.45 of the guidelines permits you to request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the effect of the objection by the Attorney General is to make the proposed qualifications legally unenforceable. 28 C.F.R. 51.10.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action the State of South Carolina plans to take with respect to this matter. If you have any questions, feel free to call Sandra S. Coleman (202-307-3718), Deputy Chief of the Voting Section.

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

JAN 17 1992

Emil W. Wald, Esq.
Spencer & Spencer
P.O. Box 790
Rock Hill, South Carolina 29731-6790

Dear Mr. Wald:

This refers to the 1991 redistricting plan for city council districts for the City of Rock Hill in York County, South Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your response to our request for more information on November 18, 1991.

We have considered carefully the information you have provided, as well as comments provided by other interested parties. At the outset, we note that the city has a council of seven members, six of whom are elected from single-member districts with the seventh, the mayor, elected at large. In the context of this 6-1 electoral system, we understand that the city proposed a plan with two districts in which blacks would constitute a majority of the total population and voting age population and a third district in which blacks would constitute a significant minority of 43 percent. In response, representatives of the local black community expressed concern over the level of representation such a proposal would afford the black community and proposed instead a plan which contained three districts in which blacks would constitute a majority. The plan ultimately adopted by the city, and presently before us, contains the two majority black districts.

The city offers two principal reasons for rejecting the alternative approach, the first being that the alternative plan did not take into account the residences of the incumbent councilmembers, four of whom were combined in two districts. Our analysis indicates, however, that a number of different boundary line modifications could easily have alleviated this concern.

Moreover, while we recognize that the desire to protect incumbents may not in and of itself be an inappropriate consideration, it may not be accomplished at the expense of minority voting potential. Garza v. Los Angeles County, 918 F.2d 763, 771 (9th Cir. 1990), cert. denied, 111 S. Ct. 681 (1991); Ketchum v. Byrne, 740 F.2d 1398, 1408-09, (7th Cir. 1984), cert. denied, 471 U.S. 1135 (1985). Where, as here, the protection afforded several white incumbents is provided at the expense of black voters, the city bears a heavy burden of demonstrating that its choices are not tainted, at least in part, by an invidious racial purpose.

The second reason advanced by the city for rejecting the alternative proposal appears to be the city's insistence that the minority community in the city is entitled to no more than two minority districts and an "influence" district, which is defined by the 43 percent black district. Not only would such an approach appear to set an artificial limitation on minority representation, an analysis of the submitted plan also reveals that an area of black population concentration immediately adjacent to District 1 known as Boyd Hill is fragmented unnecessarily from the black community contained in the minority districts and submerged in a nonminority district. The city's explanation for this fragmentation is that including the area in District 1 would unnecessarily "pack" minority voters into this district. Yet, had the city included the Boyd Hill area in District 1 and then shifted black population from District 1 to District 5 and from District 5 to District 3, as the city was urged to do by members of the minority community, the logical result would appear to have been three districts which more fairly recognize black voting strength in the city. While we do not mean to suggest in any way that the city is required to adopt any particular alternative that was presented to it, we similarly do not believe that the artificial limitation apparently set by the city can be countenanced under the Voting Rights Act.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. See Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.52). In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that your burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the city council redistricting plan.

We note that under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed changes have neither the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. In addition, you may request that the Attorney General reconsider the objection.

However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the city council redistricting plan continues to be legally unenforceable. Clark v. Roemer, 59 U.S.L.W. 4583 (U.S. June 3, 1991); 28 C.F.R. 51.10 and 51.45.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the City of Rock Hill plans to take concerning this matter. If you have any questions, you should call Richard Jerome (202-514-8696), an attorney in the Voting Section.

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General *Washington, D.C. 20530*

JUN 5 1992

June 5, 1992

Mr. W. Bernard Welborn
Town Administrator
500 Mims Avenue
Johnston, South Carolina 29832

Dear Mr. Welborn:

This refers to the 1992 redistricting plan for the Town of Johnston in Edgefield County, South Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your response to our May 11, 1992, request for additional information on May 28, 1992.

We have considered carefully the information you have provided as well as Census data and comments and information from other interested parties. The existing plan, drawn using 1980 Census data, provided for three out of six town council districts in which black voters could elect candidates of their choice. The most recent Census data reveal that significant demographic changes have occurred since 1980. As of 1990 the black percentage of the town population had risen from 54.6 to 60.5 percent. The proposed redistricting plan includes three districts with black majorities of 94.5, 82.7, and 82.0 percent.

Our analysis indicates that while racial bloc voting appears to characterize elections in the town the black population concentrations in these districts are higher than necessary to assure that black voters have an equal opportunity to elect candidates of their choice.

The effect of this apparent overconcentration is that Ward 6 is proposed to have a black population of 55.7 percent (49.5% black voting age population) and the district does not appear to be one in which black voters have an opportunity to elect candidates of their choice. While a very high black percentage in Ward 1 appears to be dictated by geography, the 80%+ black percentages in Wards 4 and 5 do not appear to be so dictated.

Our analysis of demographic patterns indicates that a plan could easily be drawn that would produce three districts in which black voters in this area of the town would have an equal opportunity to elect candidates of their choice, resulting in a plan which more fairly reflected the town's black majority.

The proposed plan was prepared by state demographers, and its review at the town level appears to have been unusually accelerated. Councilmembers were allowed only ten days in which to examine the proposed plan and make suggestions. The record shows that all three black councilmembers had concerns about the plan and wished to make changes or at least consider alternatives. These views were expressed at the first and only town council meeting held after sufficient time to study the proposed plan. The white members of the council refused to agree to explore other alternatives, although such assistance was available from the state demographer. Moreover, the white members of the council do not appear to have made any substantive response to the concerns raised by the black members. Instead, the council proceeded to vote on the plan which was approved by a four to three vote along racial lines. The town has failed to articulate any legitimate nonracial reason for its actions.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. See Georgia v. United States, 411 U.S. 526 (1973); see also, the Procedures for the Administration of Section 5 (28 C.F.R. 51.52). In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that your burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the submitted redistricting plan.

We note that under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed changes have neither the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. In addition, you may request that the Attorney General reconsider the objection. See 28 C.F.R. 51.11 and 51.45. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the proposed redistricting plan continues to be legally unenforceable. See Clark v. Roemer, 111 S.Ct. 2096 (1991); 28 C.F.R. 51.10.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the Town of

Johnston plans to take concerning this matter. If you have any questions, you should call George Schneider (202-307-3153), an attorney in the Voting Section.

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

July 21, 1992

Robert R. Horger, Esq.
Horger, Barnwell & Reid
P. O. Drawer 329
Orangeburg, South Carolina 29116-0329

Dear Mr. Horger:

This refers to the 1992 redistricting plan for Orangeburg County, South Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your responses to our request for more information on May 22, June 4, and July 1, 1992.

We have carefully considered the information you have provided, as well as Census data and comments from other interested parties. According to the 1990 Census, black persons comprise approximately 58 percent of the total population in Orangeburg County. The seven members of the Orangeburg County Council are elected from single-member districts and there appears to be a pattern of racially polarized voting in county elections.

Our review of the redistricting process has shown that the black community consistently sought from the earliest stages a redistricting plan that would contain at least four districts in which black citizens would have the opportunity to elect candidates of their choice. A series of alternative redistricting plans was presented to the council by representatives of the black community. None of these alternative plans was adopted, nor does it appear that they received serious consideration by the council majority. While Orangeburg County was not required to adopt any particular plan advocated by the black community, the county is required to show that the plan it adopted was not motivated, at least in part, by a desire to deny or abridge the right to vote on account of race or color.

In this regard, many of the reasons presented to us for rejecting these alternative plans appear to pretextual. Furthermore, it appears that the protection of incumbents, particularly white incumbents, and the desire to confine the black population percentage in District 5 to a predetermined and unnecessarily low level, were dominant factors in the council's redistricting choices.

Moreover, as you are aware the 1990 Census showed that the current redistricting plan is malapportioned and that District 5 in particular is significantly overpopulated. Our analysis indicates that the proposed redistricting plan unnecessarily removes black population from existing District 5 in the process of reducing the district's population deviation. We note also what appears to be unnecessary fragmentation of majority-black areas within the City of Orangeburg.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. See Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.52). In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that your burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the county council redistricting plan.

We note that under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed changes have neither the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. In addition, you may request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the county redistricting plan continues to be legally unenforceable. Clark v. Roemer, 111 S.Ct. 2096 (1991); 28 C.F.R. 51.10 and 51.45.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action Orangeburg County plans to take concerning this matter. If you have any questions, you should call Robert Kengle (202-514-6196), an attorney in the Voting Section.

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division

1986

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

August 28, 1992

Mr. Jack C. Langston
Dorchester County Administrator
P.O. Box 416
St. George, South Carolina 29477

Dear Mr. Langston:

This refers to the 1992 redistricting plan for the county council in Dorchester County, South Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your responses to our request for additional information on May 14, and July 2 and 9, 1992; supplemental information was received on July 21, 1992.

We have carefully considered the information you have provided, as well as information provided by other interested persons. Dorchester County has a total population of 83,060 according to the 1990 Census, of whom 23 percent are black. Recent registration figures indicate that 22 percent of those registered to vote in the county are black. The county is governed by a seven-member council elected from single-member districts.

In the existing redistricting plan, viewed from the perspective of current population and registration data, there are two districts in which blacks constitute a majority or near majority of the population and a near majority of the registered voters. District 1 is 55 percent black in population and 49 percent black ~~in~~ voter registration. District 3 (excluding a nonvoting prison population) is 49 percent black in both population and voter registration. Recent elections in these districts have involved close contests between black and white candidates with voting substantially polarized along racial lines. In 1990, a black candidate was elected in District 1, while in the 1986 and 1990 primaries in District 3 a black candidate very narrowly lost gaining the Democratic nomination.

In the proposed redistricting plan, the black population percentage in District 3 decreases significantly, to 32 percent, eliminating the existing potential for black voters to elect a candidate of their choice. This decrease is not accompanied by any increase in the black percentage in District 1, which remains at 55 percent black in population (excluding the prison population), and apparently will continue to be a swing district in the context of polarized voting. While both districts in the existing plan are substantially underpopulated, our analysis indicates that reasonable redistricting options were available that would allow the county to comply with the one-person, one-vote requirement while not reducing black voting strength in District 3. Alternatively, we note that black leaders requested that the county adopt a plan in which black voting strength would be increased in one of these two districts, with a concomitant reduction in black voting strength in the other district, and that redistricting options are available that would accomplish this goal.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of demonstrating that a proposed change neither has a discriminatory purpose nor a discriminatory effect. Georgia v. United States, 411 U.S. 526 (1973). Under the effect standard, the submitting authority must demonstrate that the change will not "lead to a retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise." Beer v. United States, 425 U.S. 130, 141 (1976). In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that the county's burden has been sustained in this instance. Accordingly, on behalf of the Attorney General, I must object to the proposed redistricting plan.

We note that under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that this change has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. In addition, you may request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the redistricting plan continues to be legally unenforceable. Clark v. Roemer, 111 S.Ct. 2096 (1991); 28 C.F.R. 51.10 and 51.45.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action Dorchester County plans to take concerning this matter. If you have any questions, you should call Mark A. Posner (202-307-1388), Special Section 5 Counsel in the Voting Section.

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

November 9, 1992

James F. Walsh, Jr., Esq.
436 Amelia Street, N.E.
Orangeburg, South Carolina 29115

Dear Mr. Walsh:

This refers to the change in method of electing the city council from at large to four single-member districts with the mayor elected at large, and the districting plan for the Town of Norway in Orangeburg County, South Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your response to our request for additional information on September 9, 1992.

We have considered carefully the information you have provided, as well as information provided by other interested persons. The Attorney General does not interpose any objection to the method of election change. However, we note that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the change. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41).

With respect to the districting plan, however, we cannot reach the same conclusion. According to the 1990 Census, Norway has a total population of 401, of whom 57 percent are black. Blacks constitute 52 percent of the voting age population. The town is governed by a five-member council composed of the mayor and four other councilmembers. Our analysis indicates that town elections are characterized by racially polarized voting. We understand that it was not until 1989 that the first black candidate was elected to the town council, and a second black candidate was elected in 1990 in a close election that produced an apparent record turnout among both whites and blacks.

The proposed districting plan includes two districts with black population majorities, which are 93 and 87 percent black. The other two districts are 46 and 8 percent black. In the political circumstances present in Norway, it appears that this plan will limit black voters to an opportunity to elect no more than two members of the council. Moreover, our review indicates that the extremely heavy concentration of blacks in two districts is not necessary to assure that black voters will have the opportunity to elect their preferred candidates. While residential patterns may make it unavoidable that one district includes such a high black concentration, it appears that a number of districting options are available that satisfy the town's districting criteria without minimizing black voting strength by overconcentrating blacks in two districts. In these circumstances, the town has failed to provide a legitimate nonracial explanation for its districting decision.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. See Georgia v. United States, 411 U.S. 526 (1973); see also 28 C.F.R. 51.52. In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that the town's burden has been sustained in this instance with regard to the districting plan. Therefore, on behalf of the Attorney General, I must object to the districting plan for the town council.

We note that under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the districting plan has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. In addition, you may request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the districting plan continues to be legally unenforceable. Clark v. Roemer, 111 S. Ct. 2096 (1991); 28 C.F.R. 51.10 and 51.45.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the Town of Norway plans to take concerning this matter. If you have any questions, you should call Mark A. Posner (202-307-1388), Special Section 5 Counsel in the Voting Section.

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

January 5, 1993

James E. Brogdon, Jr., Esq.
County Attorney
P. O. Box 1041
Marion, South Carolina 29571

Dear Mr. Brogdon:

This refers to the 1992 redistricting plan for the county council and county school board in Marion County, South Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your response to our request for additional information on November 6, 1992.

We have carefully considered the information you have provided, as well as Census data and comments from other interested parties. According to the Census, the black proportion of Marion County's total population increased from approximately 50 percent in 1980 to approximately 55 percent in 1990. Both the county council and the county school board have seven members and are elected from single-member districts. The county council, however, has partisan elections, while the county school board has nonpartisan elections.

Under the existing redistricting plan, there are two districts with black population percentages in excess of 65 percent and three districts with black population percentages between about 51 and 57 percent. In elections under this plan, black voters consistently have been able to elect candidates of their choice from the two districts over 65 percent black in

population to both the county council and the county school board. In addition, a black-sponsored candidate for the county council has been successful in a third district. Thus, at the time of the redistricting there were three black county council members and two black school board members.

The information you have provided reveals that the county council decided that its 1992 redistricting plan, which also would apply to elections for the county school board, should provide for no more than three districts with substantial black population majorities plus one district that would have a black population percentage no higher than the black population percentage in the county as a whole. The proposed redistricting plan accomplishes that result; it has three districts with black population percentages in excess of 65 percent and one district --District 2--with a black population percentage of about 55 percent.

Our analysis of the demographics in the county indicates that as a result of the ceiling placed on the black share of the population in District 2, black population concentrations are fragmented. The county contends, however, that its redistricting decisions were not racially discriminatory because its plan provides black voters a realistic opportunity to elect candidates of choice in three districts and creates a "swing" district, as well. We have considered this contention in light of the history of racial discrimination in the county and the election results over the past decade. There appears to be a persistent pattern of racially polarized voting in the county, with black-sponsored candidates facing consistent defeat other than in election districts with substantial black majorities. The one exception--the success of a black county council candidate in existing District 5--appears to be isolated. In addition, there is insufficient evidence that voter behavior in that district, which is centered in the City of Mullins and the Town of Nichols in the eastern part of the county, is likely to be replicated in the large, rural area in the western part of the county, which the proposed plan places in District 2.

Moreover, the county council was informed by representatives of the black community about their concerns regarding the effect of the ceiling placed on the black share of the population in proposed District 2. The alternative plan proposed by representatives of the black community appears not to have received serious consideration by the county council and the county has not proffered an explanation--other than its predetermined limit on the black share of the population in District 2--for rejecting the alternative plan. While we do not mean to suggest that the county council was required to adopt

this particular plan, which has four districts with substantial black population majorities, we note that at the very least this plan revealed that fragmentation of the black population concentrations on the borders of District 2 was not necessary to achieve any non-racial redistricting objective.

Finally, it appears that the protection of the interests of incumbents played a significant role in the county council's redistricting efforts, and that these interests may have led to the limitation on black population in District 2. While we recognize that the desire to protect incumbents may not in and of itself be an inappropriate consideration, it may not be accomplished at the expense of minority voting potential. Garza v. Los Angeles County, 918 F.2d 763, 771 (9th Cir. 1990), cert. denied, 111 S. Ct. 681 (1991); Ketchum v. Byrne, 740 F.2d 1398, 1408-09, (7th Cir. 1984), cert. denied, 471 U.S. 1135 (1985). Where, as here, the protection afforded incumbents appears to be provided at the expense of black voters, the county council bears a heavy burden of demonstrating that its choices are not tainted, at least in part, by an invidious racial purpose.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. See Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.52). In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that your burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the redistricting plan for the county council and school board.

We note that under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed changes have neither the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. In addition, you may request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the county council and school board redistricting plan continues to be legally unenforceable. Clark v. Roemer, 111 S.Ct. 2096 (1991); 28 C.F.R. 51.10 and 51.45.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action Marion County plans to take concerning this matter. If you have any questions, you should call Robert Kengle (202-514-6196), an attorney in the Voting Section.

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General *Washington, D.C. 20035*

February 8, 1993

Mr. Herman H. Felix
Chairperson, Lee County Council
Courthouse Square
Bishopville, South Carolina 29010

Jacob H. Jennings, Esq.
Jennings & Jennings
P.O. Box 106
Bishopville, South Carolina 29010-0106

Dear Messrs. Felix and Jennings:

This refers to the 1992 redistricting plan for the county council and county school board in Lee County, South Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your responses to our requests for additional information on August 31 and December 10, 1992; supplemental information was received on September 28 and 29, October 7, 15, and 23, 1992, and January 27, 1993.

We have carefully considered the information you have provided, as well as information provided by other interested persons. According to the 1990 Census, blacks comprise 62 percent of Lee County's total population and 57 percent of its voting age population. The county council and school board are comprised of seven members elected from seven single-member districts; county council and county school board districts are coterminous.

Under the existing redistricting plan, there are two districts with black populations in excess of 74 percent and five districts with black population percentages between 52 and 63 percent. In elections held under this plan, black voters have been able to elect candidates of their choice in the two

districts over 74 percent black in population to both the county council and county school board (Districts 3 and 5). Thus, at the time of redistricting, there were two black persons serving on the county council and county school board; all were elected from Districts 3 or 5.

The redistricting process appears to have been controlled by four of the white councilmembers, without the benefit of substantial input from the black councilmembers or members of the minority community. The self-described goal of the council was to draw a plan that retained Districts 3 and 5 as districts with sizeable black population majorities while drawing two other districts with no more than a 65 percent black share of the population. The proposed redistricting includes two districts with black population percentages of 76 and 77 percent (Districts 3 and 5, respectively), and two districts with 65 percent black population percentages (Districts 1 and 6). The three remaining districts have black percentages of 57, 51 and 47 percent.

Our analysis of the demographics of the county indicates that as a result of the county's choice to limit the black share of the population of Districts 1 and 6 to 65 percent, black population concentrations have been fragmented. The county contends, however, that black voters will have a realistic opportunity to elect candidates of their choice in the four proposed districts with 65 percent or better black population percentages -- which includes Districts 1 and 6. We have considered these contentions in light of the history of racial discrimination in the county, the disparate socio-economic conditions between the county's black and white populations, the respective black and white voter registration and turnout rates, and the election results over the past decade. There appears to be a persistent pattern of extremely racially polarized voting in the county, with black-sponsored candidates facing consistent defeat other than in election districts with substantial black population majorities. Moreover, the effects of the polarization in voting are exacerbated by the lower registration and turnout rates of blacks compared to whites which are traceable to the history of discrimination and resulting disparities in socio-economic status. These differences appear to be particularly severe in proposed District 6.

Concerns with the proposed plan were raised by the black community during the redistricting process but the alternative plan they proposed does not appear to have been given serious consideration by the county council. In addition, the county rejected a proposal for a bi-racial committee to study the county's proposed and the minority-sponsored alternative plans, despite concerns of the minority community that they were not provided a meaningful opportunity to participate in the

development of the county's redistricting proposal, which they pointed out was the result of an all-white redistricting committee's efforts. While we do not mean to suggest that the council was required to adopt this alternative plan, we note that the alternative plan demonstrates that it was possible to create more than two districts with substantial black population majorities of at least 70 percent without departing from legitimate, nonracial redistricting criteria.

Finally, it appears that the protection of the interests of incumbents played a significant role in the county council's redistricting efforts, and that these interests may have led to limiting artificially the black population in Districts 1 and 6, and reducing the black population percentages in Districts 2, 4 and 7. While we recognize that the desire to protect incumbents may not in and of itself be an inappropriate consideration, it may not be accomplished at the expense of minority voting potential. Garza v. Los Angeles County, 918 F.2d 763, 771 (9th Cir. 1990), cert. denied, 111 S. Ct. 681 (1991); Ketchum v. Byrne, 740 F.2d 1398, 1408-09, (7th Cir. 1984), cert. denied, 471 U.S. 1135 (1985). Where, as here, the protection afforded incumbents appears to be provided at the expense of black voters, the county council bears a heavy burden of demonstrating that its choices are not tainted, at least in part, by an invidious racial purpose.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. See Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.52). In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that your burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the redistricting plan for the county council and school board.

We note that under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed changes have neither the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. In addition, you may request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the county council and school board redistricting plan continues to be legally unenforceable. Clark v. Roemer, 111 S.Ct. 2096 (1991); 28 C.F.R. 51.10 and 51.45.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action Lee County plans to take concerning these matters. If you have any questions, you should call Ms. Zita Johnson-Betts (202-514-8690), an attorney in the Voting Section.

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

June 1, 1993

Jonathan R. Hendrix, Esq.
Hendrix & Steigner
P.O. Box 1263
Lexington, South Carolina 29072

Dear Mr. Hendrix:

This refers to the adoption of a majority vote requirement for the election of the mayor and council for the consolidated Town of Batesburg-Leesville in Lexington and Saluda Counties, South Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your further responses to our request for additional information on April 2, 5, 9, 15 and 27, 1993.

We have carefully considered the information you have provided, as well as 1990 Census data and information and comments from other interested parties. According to the 1990 Census, black persons would constitute 45 percent of the Town of Batesburg-Leesville's total population and 40 percent of its voting age population. Based upon 1992 data, 29 percent of the town's registered voters would be black persons.

On December 15, 1992, the Attorney General precleared the consolidation of the Towns of Batesburg and Leesville, including, inter alia, a council elected from eight single-member districts with the mayor elected at large, and the districting plan for the single-member districts. Because the information provided at that time was insufficient to enable us to reach a determination regarding the adoption of a majority vote requirement for the election of the mayor and town council, we requested additional information.

Prior to the consolidation, both the Towns of Batesburg and Leesville elected their mayors and councilmembers at large with a plurality vote requirement. Our analysis reveals an apparent pattern of racially polarized voting in town elections for both Batesburg and Leesville that has hampered the ability of black voters to elect candidates of choice and has deterred potential candidates of choice of the black community from competing for at-large offices. Indeed, single-member districts were adopted for the election of councilmembers for the consolidated town as a way to address the concern that municipal elections in the respective towns had been racially polarized.

With regard to the majority vote requirement, we note that on February 24, 1986, the Attorney General interposed a Section 5 objection to the majority vote requirement for the mayor and council for the Town of Batesburg. In our objection letter we stated that in the context of an at-large electoral scheme, the proposed change might, "dilute minority voting strength and exacerbate the election difficulties currently faced by black candidates." Thus, the change now before us would impose in the consolidated town the same electoral feature, i.e., a majority vote requirement, to which we interposed an objection in 1986 in Batesburg.

We recognize that a majority vote requirement in councilmanic elections in the single-member districts, four of which have black voting age population majorities, does not raise the same concerns as its use in an at-large system. But the mayor of the consolidated town will be elected at large. It is well recognized that where a jurisdiction has a significant minority population and a pattern of racially polarized voting exists, the adoption of a majority vote requirement in an at-large election system may further limit the opportunity of minority voters to elect candidates of choice by increasing the probability of "head-to-head" contests between minority and white candidates. See, e.g., Rogers v. Lodge, 458 U.S. 613, 627 (1982); City of Port Arthur v. United States, 459 U.S. 156 (1982).

We understand that at a public hearing in 1992, elected officials were advised by their demographer and a black leader that a majority vote requirement in an at-large mayoral election would make the election of a minority supported candidate for mayor less likely. It appears that the decision to adopt an electoral system that includes a majority vote requirement for the election of mayor was made despite these concerns.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. See Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.52). In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that the Town's burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the majority vote requirement insofar as it applies to mayoral elections.

We note that under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the use of a majority vote requirement has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. In addition, you may request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, use of a majority vote requirement continues to be legally unenforceable. Clark v. Roemer, 111 S. Ct. 2096 (1991); 28 C.F.R. 51.10 and 51.45.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the Town of Batesburg-Leesville plans to take concerning this matter. If you have any questions, you should call Ms. Zita Johnson-Betts (202-514-8690), an attorney in the Voting Section.

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

July 6, 1993

Mr. W. Bernard Welborn
Town Administrator
500 Mims Avenue
Johnston, South Carolina 29832

Dear Mr. Welborn:

This refers to the 1993 redistricting plan and the procedures for conducting the September 14, 1993, special election for the Town of Johnston in Edgefield County, South Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your submission on May 4, 1993.

We have considered carefully the information you have provided, as well as Census data, information from your submission of the 1992 redistricting plan, and information and comments from other interested parties. According to the 1990 Census, between 1980 and 1990, the black share of Johnston's population increased from 53.6 percent to 60.5 percent. There are six members of the Johnston town council elected from single-member districts, with the mayor elected at large.

On June 5, 1992, the Attorney General interposed an objection under Section 5 to the first council redistricting plan adopted by the town following the 1990 Census. Our objection was based on the plan's overconcentration of black persons into three districts that were, respectively, 94, 83, and 82 percent black in total population. The district with the next highest black population percentage was Ward 6, at 56 percent (49.5 percent black voting age population). Our analysis indicated that racial bloc voting appears to characterize elections in the town. We noted that the objected-to plan unnecessarily "packed" black voters into three districts and that while geography dictated the high black population percentage in Ward 1, the 80%+ black percentages in the other two districts, Wards 4 and 5, did not appear necessary. We noted that the objected-to plan was adopted in a racially divisive, closed process and that during this process, the council failed to consider any redistricting options that would have produced four districts in which black voters would have an opportunity to elect their candidates of choice.

The redistricting plan now before us makes no changes to the three districts in the objected-to plan with black population percentages over 80 percent (94, 83 and 82 percent, respectively). It does, however, create a fourth district (Ward 6) with a black population majority of 61 percent (56 percent black in voting age population). Before adopting the submitted plan, the town council considered an alternative redistricting plan, drawn by its own demographer and supported by the black community, that would have reduced the overconcentration of black population that we identified in our objection letter, thereby creating a Ward 6 in which the black electorate would have a more realistic opportunity to elect a candidate of its choice. In rejecting this alternative, the council chose not to follow the recommended approach of its demographer and, instead, focused on redistricting approaches that limited the black population percentage in Ward 6 to a predetermined level while maintaining the overconcentration of black population in Wards 4 and 5.

The town's explanation that the proposed alternative was unacceptable because it reduced the black percentages in Wards 4 and 5 is unpersuasive. No such concerns were raised about the reduction by the black community; indeed, reducing the overconcentration of black population in those districts was advocated by the black community in order to produce a fairly drawn redistricting plan. While the town was not required to adopt a particular redistricting plan or approach advocated by the black community, the town's proffered reasons for rejecting this alternative proposal appear pretextual. Nor is this plan justified by the circumstances here where the minority councilmembers apparently felt constrained to vote for it lest a more unfavorable plan be adopted.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. Georgia v. United States, 411 U.S. 526 (1973); Procedures for the Administration of Section 5 (28 C.F.R. 51.52). In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that your burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the submitted redistricting plan.

We note that under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed change has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. In addition, you may request that the Attorney General reconsider the objection. See 28 C.F.R. 51.11 and 51.45. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the proposed redistricting plan continues to be legally unenforceable. See Clark v. Roemer, 111 S.Ct. 2096 (1991); 28 C.F.R. 51.10.

Because the procedures for conducting the September 14, 1993, special election are dependent upon preclearance of the 1993 redistricting plan, the Attorney General will make no determination with regard to the special election at this time. See 28 C.F.R. 51.22.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the Town of Johnston plans to take concerning this matter. If you have any questions, you should call George Schneider (202-307-3153), an attorney in the Voting Section.

Sincerely,

/s/ James P. Turner
Acting Assistant Attorney General
Civil Rights Division

JPT:DLK:CMK:lrj
DJ 166-012-3
93-1658

OCT 26 1993

Greg W. Anderson, Esq.
Anderson & Anderson
306 Main Street
Edgefield, South Carolina 29824

Dear Mr. Anderson:

This refers to your request that the Attorney General reconsider the July 6, 1993, objection under Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c, to the 1993 redistricting plan for the Town of Johnston in Edgefield County, South Carolina. We received your request on September 15, 1993.

We have reconsidered our earlier determination in this matter based on the information and arguments that you have advanced in support of your request, along with other information in our files and comments from other interested persons. According to the 1990 Census, black persons constitute 60.5 percent of the town's population (54.5% of the voting age population). Johnston is governed by a six-member town council elected from single-member districts with a mayor who is elected at large.

The submitting authority has the burden under Section 5 of showing that a submitted voting change has neither a discriminatory purpose nor a discriminatory effect. See Georgia v. United States, 411 U.S. 526 (1973); see also 28 C.F.R. 51.52. On two occasions, we have interposed objections to the town's post-1990 redistricting plans for the town council because the town had failed to demonstrate that the plans were free of the proscribed discriminatory purpose. Our conclusions were based

on a number of factors, including our analysis of voting patterns in town elections and the continued overconcentration of black population into two districts, Districts 4 and 5, that are over 80 percent black. We also considered the fact that the town's demographics appear to allow for the creation of a fourth district from which black voters would have a fairer opportunity to elect candidates of their choice than that presented by the proposed plans. The town has twice rejected alternatives that would have effectuated this result, as well as cured the observed overconcentration of black population.

The limited information provided by the town with its request for reconsideration does not warrant us altering our view that the objected-to plan fails to pass muster under Section 5. The town's request presents no new information rebutting our earlier determination that its stated reasons for the rejection of alternatives preferred by the black community were pretextual. Nor does it address our concerns that District 6 does not present a district from which black voters will have a fair opportunity to elect their candidates of choice and that black voters are overconcentrated in Districts 4 and 5.

During our prior review, we addressed the town's position that the objected-to plan is the result of the unanimous approval of the town council, including its black members and, thus, is entitled to preclearance. As we stated in our July 6, 1993, letter, we are not persuaded that this plan is justified under circumstances where the black members of the council apparently felt "constrained to vote for it lest a more unfavorable plan be adopted."

In light of the considerations discussed above, I remain unable to conclude that the Town of Johnston has carried its burden of showing that the submitted change has neither a discriminatory purpose nor a discriminatory effect. See Georgia v. United States, 411 U.S. 526 (1973); 28 C.F.R. 51.52. Therefore, on behalf of the Attorney General, I must decline to withdraw the objection to the 1993 redistricting plan for town council elections.

As we previously advised, you may seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed change has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. We remind you that until such a judgment is rendered by that court, the objection by the Attorney General remains in effect and the proposed change continues to be legally unenforceable. See Clark v. Roemer, 111 S. Ct. 2096 (1991); 28 C.F.R. 51.10, 51.11, and 51.48(c) and (d).

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the Town of Johnston plans to take concerning this matter. If you have any questions, you should call Delora L. Kennebrew (202) 307-3718, Deputy Chief of the Voting Section.

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

May 2, 1994

The Honorable Robert J. Sheheen
Speaker of the House
South Carolina House of Representatives
P. O. Box 11867
Columbia, South Carolina 29211

Dear Mr. Speaker:

This refers to Act No. R.287 (1994), which provides for the 1994 redistricting plan for the House of Representatives of the State of South Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your initial submission on March 24, 1994; supplemental information was received on March 30 and April 14, 21, and 28, 1994.

We have carefully considered the information you have provided, as well as Census data and information and comments from other interested persons. The Voting Rights Act requires that the submitting authority demonstrate that the proposed change neither has a discriminatory purpose nor a discriminatory effect. Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.52). In addition, preclearance may not be obtained if implementation of the change would clearly violate Section 2 of the Act, 42 U.S.C. 1973. 28 C.F.R. 51.55. In the case of a statewide redistricting, Section 5 requires us not only to review the overall impact of the plan on minority voters, but also to understand the reasons for and the impact of each of the legislative choices that were made in adopting the particular plan.

In making these judgments, we apply the legal rules and precedents established by the federal courts and our published administrative guidelines. See, e.g., 28 C.F.R. 51.52(a), 51.55, 51.56. For example, we cannot preclear those portions of a plan where the legislature has deferred to the interests of incumbents while refusing to accommodate the community of interest shared by insular minorities. See, e.g., Garza v. Los Angeles County, 918 F.2d 763, 771 (9th Cir. 1990), cert. denied, 111 S. Ct. 681 (1991); Ketchum v. Byrne, 740 F.2d 1398, 1408-09 (7th Cir. 1984), cert. denied, 471 U.S. 1135 (1985). Such concerns are frequently related to the unnecessary fragmentation of minority communities or the needless packing of minority constituents into a minimal number of districts in which they can expect to elect candidates of their choice. 28 C.F.R. 51.59; see also Voinovich v. Quilter, 113 S.Ct. 1149, 1155 (1993). Finally, our entire review is guided by the principle that the Act ensures fair election opportunities and does not require that any jurisdiction attempt to guarantee racially proportional results.

According to the 1990 Census, the State of South Carolina has a total population of nearly 3.5 million. The state's black residents make up 29.8 percent of the 1990 total population and 26.9 percent of the voting age population, and currently represent about 24.4 percent of the state's registered voters. The black population is concentrated in the state's largest cities and also is concentrated in a generally rural swath of population that runs parallel to the coast, from the northern to the southern borders of the state, extending from coastal areas to over 100 miles inland.

The state House of Representatives has 124 members elected from single-member districts. State House members are elected to two-year concurrent terms in partisan elections with a majority vote requirement in the primary.

Our review of the state's recent election history, including in particular voting patterns among black and white voters in the 1992 legislative and congressional elections, and in addition our review of Voting Rights Act litigation and Section 5 submissions involving redistrictings and election method changes in South Carolina, indicate that legislative elections throughout the state are characterized by a pattern of racially polarized voting. Further, it appears that black candidates generally are the candidates of choice of black voters in legislative elections.

There are 18 black state representatives at this time. All were elected in districts where blacks constitute a majority of the voting age population (excluding military residents, who generally do not participate in local elections), and 14 of the 18 were elected in districts where blacks constitute over 55 percent of the voting age population. Moreover, all but one were

elected in districts that have a black registration majority (the one exception is a district that has a 49 percent black registration) and 13 were elected in districts where blacks constitute at least 55 percent of the registered voters.

Black persons were not elected in 1992 in ten of the black population majority districts in the existing plan, seven of which have black voting age population majorities. In contrast to the districts where black candidates were elected, only one of these ten districts has a black voting age population majority of greater than 55 percent and, while six of the ten districts have a black registration majority, in none of these districts do blacks constitute more than 55 percent of the registered voters. These districts also generally are located in the rural areas of the state where it appears that the present day effects of the state's history of discrimination are more substantial, and thus where a higher black voting age population majority may be necessary to allow black voters an opportunity to elect a candidate of their choice.

The existing House plan was adopted by the local United States district court in May 1992 after the state was unable to adopt a plan through the political process. Burton v. Sheheen, 793 F. Supp. 1329 (D. S.C. 1992) (three-judge court), vacated and remanded, 113 S.Ct. 2954 (1993). Because the plan was court-ordered, and did not reflect the policy choices of the state, it was not subject to Section 5 review. McDaniel v. Sanchez, 452 U.S. 130 (1981); 28 C.F.R. 51.18.

The Supreme Court vacated and remanded the district court's order "for further consideration in light of the position presented by the Solicitor General in his brief for the United States." 113 S.Ct. at 2954. The Solicitor General's brief explained that the district court had mistakenly regarded the redistricting dispute as arising under Section 5 of the Voting Rights Act, which led it to use the Section 5 retrogression standard as the test for whether its plan for the state House did not discriminate on the basis of race. Beer v. United States, 425 U.S. 130 (1976). Instead, plaintiffs' complaints alleged that the 1982 House plan was unconstitutionally malapportioned and that it denied black voters an equal opportunity to elect candidates of their choice, in violation of Section 2 of the Voting Rights Act.

In these circumstances, "the [district] court's primary task was to fashion a [plan] that would not itself violate the legal standards that the plaintiffs had sued to enforce." Brief for the United States as Amicus Curiae (in the Supreme Court), at 10. The district court did commence a Section 2 analysis of its plan, but did so in a limited fashion. As set forth in the Solicitor General's brief, this analysis was flawed for two principal

reasons: the court did not conduct a sufficient analysis of the extent to which voting is racially polarized and it erred in its analysis as to whether its plan should have included additional compact and contiguous districts with black population majorities. In the latter regard, the court did not conduct an adequate inquiry before concluding that black voters would have an opportunity to elect a candidate of their choice in any district having a black voting age population majority (plaintiffs argued that a somewhat higher percentage is necessary). The court also placed great weight on its determination that there is a state policy favoring districts that do not cross county lines; however, the Solicitor General's brief questioned the evidentiary basis for this determination and noted that deference to state policy has only a limited role in a Section 2 analysis. In this regard, the districts in the 1982 House plan divided 42 of the state's 46 counties.

It was against this backdrop that the General Assembly undertook to adopt a House redistricting plan this year. This task essentially was delegated to the House; after the House passed the submitted plan, the Senate adopted it without any substantive review (as a matter of legislative courtesy) and the governor allowed the plan to become law without his signature. In the House, it was decided that the starting point for adopting a new plan would be the plan adopted by the district court. Given the Supreme Court's decision to vacate the district court's order adopting that plan and remand for further Section 2 analysis, it was incumbent on the House (once it decided to rely on the court-ordered plan) to undertake a reasoned inquiry into whether that plan provides black residents of the state with the equal electoral opportunity mandated by the Voting Rights Act.

Our review indicates, however, that the House gave little or no consideration to Section 2 of the Voting Rights Act in formulating the submitted plan, and also did not identify any state redistricting policies that would guide its decisionmaking process. Instead, incumbency protection drove the process as the existing plan was altered only if all the affected representatives agreed. Thus, it was preordained that no change would be made that would increase the number of districts in which black voters would have the opportunity to elect their preferred candidates. Alternative plans that sought to make such changes were voted down with little debate.

The overall number of black majority districts in the existing and proposed plans in total population, voting age population, and registered voters (excluding military populations) may be summarized as follows:

Plan	Total Pop.	VAP	Reg. Voters
Existing	28	25	23
Proposed	27	22	Not available

With this background in mind, our review indicates that there are a number of specific areas of the state where the state's concern for incumbency protection, and disregard for black electoral opportunity, yielded districting configurations that do not satisfy the Section 5 purpose and effect test. These areas are as follows.

Charleston County

The proposed plan, in Charleston County, includes three districts with black voting age population majorities (excluding military population), all of which are represented by black legislators (Districts 109, 111, and 116). Proposed Districts 111 and 116 appear to have substantial black registration majorities. District 109, however, appears to have a slight white registration majority and also includes a white population growth area. There is a fourth district (District 110) that has a black population majority but is only 44 percent black in voting age population. Immediately adjacent to Districts 109 and 111 (to the north, south, and southwest) there are significant black concentrations which are fragmented among District 110 and two white-majority districts (Districts 118 and 119). The state has offered no adequate explanation for this fragmentation which, if cured, would result in the creation of four districts in the county with black voting age population and registration majorities in which black voters would have a realistic electoral opportunity.

Richland County

In Richland County, the state similarly has unnecessarily fragmented black population among white-majority districts, again apparently to protect white incumbents. The county includes four black voting age population majority districts that have elected black representatives. Three of these districts (Districts 77, 73, and 74) are contiguous, aligned on a north-south axis, but to their west and south black population is fragmented into two white-majority districts (Districts 72 and 75). It also appears that, to some extent, black population has been unnecessarily packed in Districts 77, 73, and 74. By remedying this fragmentation and lessening to some extent the black concentrations in these three districts, a fifth black majority district may be drawn with a black voting age population percentage greater than 55 percent.

Fairfield and Chester Counties

Fairfield and Chester Counties are located immediately to the north of Richland County. Proposed District 41, which includes all of Fairfield County and reaches north to include a portion of Chester County and the City of Chester, has a bare black voting age population majority (51 percent) and appears

to be majority white in voter registration. By combining Fairfield County (54 percent black in voting age population) with the City of Chester's black population, the state has created a configuration that has the potential to yield a district with a significant black voting age population majority in this area of the state. However, the black population percentage in District 41 is minimized by drawing the district to the City of Chester through the more heavily white south-central and southeastern portions of Chester County rather than through the southwestern portion of the county where black concentrations are located. The state also includes in the district a majority white area on the eastern side of Fairfield County. The state has not offered an adequate explanation for rejecting proposed alternatives which avoid this minimization of black voting strength.

Clarendon, Williamsburg, and Georgetown Counties

These three counties occupy a rural area of the state located along an east-west axis from the coast to Richland County. From west to east, the proposed plan includes Districts 64, 101, 103, and 108 in this area. District 101 (located principally in Williamsburg County) is 60 percent black in voting age population in the existing plan and is increased to 65 percent black in voting age population in the proposed plan. In 1992, the current black representative defeated a white candidate in a close and racially polarized Democratic primary election. Existing Districts 64 and 103, located to the west and east of District 101, have bare black voting age population majorities but these majorities are eliminated in the proposed plan. Finally, District 108 is a white-majority district.

Our analysis indicates that the elimination of the black voting age population majorities in Districts 64 and 103 violates the nonretrogression requirement of Section 5. Beer v. United States, supra. While we understand that the reductions were occasioned by an effort to increase the black percentage in District 101, it appears that this goal could have been achieved without reducing the black percentages in Districts 64 and 103, by making other adjustments in the configurations of the latter districts. In particular, with respect to District 103, the proposed plan places a significant concentration of black population -- located in the City of Georgetown -- just outside the district on the border with District 108. The state has not explained why it excluded the black population in the City of Georgetown from District 103. Alternatives rejected by the House, which avoided this fragmentation, drew District 103 at above 55 percent black in voting age population.

Allendale, Bamberg, and Barnwell Counties

Allendale County has the highest black percentage among South Carolina counties (63 percent black in voting age

population). While the proposed plan places most of the county in District 91, the black population in the eastern corner of the county is fragmented into District 90, which also involves the division of the towns of Allendale and Fairfax between the two districts. In addition, at the northern end of the two districts, there is a band of black population that runs from west to east which is fragmented between the two districts. As a result of this configuration, neither district has a black voting age population majority although both are over 40 percent black in voting age population. Alternative plans rejected by the legislature retain all of Allendale County in District 91, and also offer the possibility of lessening the fragmentation at the northern end of the districts. Again, the state has not offered an adequate explanation for rejecting these alternatives.

Edgefield, Saluda, and Aiken Counties

To the northwest of District 91 is proposed District 82 (37 percent black in voting age population), which includes all of Edgefield County and a portion of Aiken County to the east. The state drew District 82 to skirt the black concentrations located in the northern portion of the City of Aiken. In addition, by following the county line between Edgefield and Saluda Counties, the district (on its northern side) appears artificially to fragment a black population concentration located on both sides of the county line. An alternative plan rejected by the House would have modified the Aiken County portion of the district to include black population in the City of Aiken and also minimized the fragmentation on the northern border of the district, thus occasioning a district that is over 55 percent black in voting age population. This alternative configuration appears to more fairly reflect black voting strength in this area, and the state has not justified its proposed configuration.

McCormick, Greenwood, and Abbeville Counties

Adjacent to District 91, to the northwest, is proposed District 12 (36 percent black in voting age population). This district includes all of McCormick County, a substantial portion of Greenwood County (including a portion of the City of Greenwood), and also a small portion of Saluda County. Alternative plans rejected by the House demonstrated that an additional district with a black voting age population majority over 55 percent may be drawn in this area of the state. This apparently would involve extending District 12 into Abbeville County to include black populations in the towns of Abbeville and Calhoun Falls, removing rural areas in Greenwood and Saluda Counties, while retaining the black population in the City of

Greenwood. The state has not provided an adequate explanation of the reasons for adopting its proposed configuration, and thus we are unable to conclude that the state has met its Section 5 burden in this portion of the plan either.

Colleton, Beaufort, Jasper, and Hampton Counties

This four-county area occupies the southern tip of the state below the City of Charleston. In the existing and proposed plans, this area includes five whole districts. In the existing plan, two of the districts (Districts 120 and 122) have black voting age population majorities (excluding military population). District 122, which is 53 percent black in registration, includes a large development projected to be occupied primarily by white population. We have been advised that to compensate for this latter circumstance, the proposed plan increases the black percentage in District 122 by transferring black population from District 120, thus making District 120 a white-majority district.

As in the Clarendon/Williamsburg/Georgetown area, however, our analysis indicates that the goal of increasing the black percentage in District 122 could have been achieved without occasioning a retrogression in black voting strength which occurs by eliminating from this area a second district with a black voting age population majority. Specifically, it appears that there are significant black concentrations located roughly along the eastern side of this area in Colleton County and in the Cities of Beaufort and Port Royal in Beaufort County. The proposed plan appears to fragment unnecessarily this population among Districts 120, 121, 66, and 124.

Marlboro and Dillon Counties

In the northeastern part of the state, the proposed plan draws District 54, which includes almost all of Marlboro County, and District 55, which includes almost all of Dillon County. Each district has a substantial black minority population (46 percent and 37 percent black in voting age population, respectively). Significant black concentrations are located in the largest town of each county, Bennettsville in Marlboro and Dillon in Dillon County. An alternative plan rejected by the House demonstrated that a compact district with a black voting age population majority may be configured in this area (by linking the Cities of Bennettsville and Dillon). The state has not provided an adequate explanation for its proposed configuration and thus we are unable to conclude that the state has met its Section 5 burden.

In sum, our analysis reveals that the redistricting process was designed to ensure incumbency protection, not compliance with the Voting Rights Act. Without analyzing the Voting Rights Act concerns that the Supreme Court directed should be considered

before the 1992 redistricting plan could be used again, the House opted for a least-change approach that limited revisions only to those that each district's incumbent would accept. The state has not advanced state policy considerations served by the proposed plan other than incumbency protection and the ease of administering a plan essentially the same as the 1992 plan.

The state, fully aware of alternative redistricting configurations that created additional black-majority districts, rejected them without considering them seriously. The proposed plan reduces from 25 to 22 the number of districts with black majorities in voting age population (excluding military populations) compared to the 1992 plan and fragments and packs black population concentrations to avoid drawing additional black-majority districts or enhancing the existing black majorities. Indeed, in the areas of the state identified above, there is the potential to draw nine additional districts with black majorities in voting age population. Overall, the state has failed to justify its redistricting plan on legitimate, nonracial grounds.

Accordingly, in light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that the state's burden has been sustained with regard to the redistricting here under review. Therefore, on behalf of the Attorney General, I must object to the 1994 redistricting plan for the state House of Representatives because of the concerns relating to the proposed configurations for the areas identified above.

Of course, as provided by Section 5, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed 1994 House redistricting plan has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. In addition, you may request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the 1994 redistricting plan for the state House of Representatives continues to be legally unenforceable. Clark v. Roemer, 500 U.S. 646 (1991); 28 C.F.R. 51.10 and 51.45. In this regard, you should be aware that the opening of candidate qualifying pursuant to the 1994 plan would constitute a prohibited implementation of this plan. South Carolina v. United States, 585 F. Supp. 418 (D.D.C. 1984); Busbee v. Smith, 549 F. Supp. 494, 497 n.1 (D.D.C. 1982).

We understand that the current schedule calls for candidate qualifying to begin on June 1, 1994, for a primary election on August 9, 1994. We believe that sufficient time remains for the state to make the necessary adjustments to the submitted plan and

to obtain Section 5 preclearance for the plan so that the election may proceed on schedule under a plan that meets the requirements of federal law. Should the state decide to seek to adopt a new plan, our staff remains available to discuss further the nature of our concerns with the submitted plan; if a new plan is adopted and administrative review is sought, we are prepared to respond on an expedited basis.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the State of South Carolina plans to take concerning this matter. If you have any questions, you should call Mark A. Posner, Special Section 5 Counsel in the Voting Section at (202) 307-1388.

Sincerely,

Deval L. Patrick
Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

June 6, 1994

Jacob H. Jennings, Esq.
Jennings & Jennings
P.O. Box 106
Bishopville, South Carolina 29010-0106

Helen T. McFadden, Esq.
Jenkinson, Jenkinson, & McFadden
P. O. Drawer 669
Kingstree, South Carolina 29556

Dear Mr. Jennings and Ms. McFadden:

This refers to the adoption of a special election schedule (including the candidate qualifying period, the selection of an April 19, 1994 special primary election date; a May 3, 1994 special run-off election date; and a June 7, 1994 special general election date) for the county council and county school board in Lee County, South Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your submission on May 5, 1994; supplemental information was received on May 6, 20, 27 and June 1 and 2, 1994.

We have carefully considered the information you have provided as well as Census data, information contained in our files of the county's previous Section 5 submissions and information received from other interested persons. According to the 1990 Census, black persons constitute 62 percent of Lee

County's total population and 57 percent of its voting age population. Both the county council and school board have seven members elected from identical single-member districts. Two black persons serve on the county council and on the school board.

Both bodies have staggered, four-year terms. For the county council, the 1992 elections in Districts 1, 2 and 5 were postponed; elections in Districts 3, 4, 6 and 7 are scheduled for later this year. For the school board, the 1992 elections in Districts 1, 2, 3 and 7 were postponed; elections in Districts 4, 5 and 6 are scheduled for later this year. The 1992 elections were postponed because the existing redistricting plan violated the one person, one vote requirement of the Fourteenth Amendment and the county had failed to adopt and obtain Section 5 preclearance for a new redistricting plan in time for elections to be held in 1992. This submission concerns the county's special election schedule for the districts in which the 1992 elections were postponed and the incumbents have held over in office.

On February 8, 1993, the county's first redistricting effort prompted a Section 5 objection by the Attorney General. Our objection letter noted that there appeared to be "a persistent pattern of extremely racially polarized voting in the county, with black-sponsored candidates facing consistent defeat other than in election districts with substantial black population majorities." We found that "[t]he redistricting process appears to have been controlled by four of the white councilmembers, without the benefit of substantial input from the black councilmembers or members of the minority community," that "black population concentrations have been fragmented," and that "the protection of the interests of incumbents played a significant role in the county council's redistricting efforts." The letter expressed particular concerns about the configuration of District 1, one of the districts at issue in the submitted special election schedule.

On February 4, 1994, the Attorney General granted Section 5 preclearance to redistricting plans adopted in response to the objection. The district configurations in the new redistricting plans reflect significant population shifts and divisions of voting precincts from the old plans. Most notably, the black population percentage in District 1 increases by twelve percentage points from the existing plan (53.6% black in voting age population) to the precleared plan (65.4% black in voting age population). Moreover, all nine voting precincts in new District 1, which is 62 percent black in voter registration, are split between two or more Districts as compared with the old redistricting plan in which District 1 split only one voting precinct.

It is against this backdrop that we have evaluated the county's decision to set an expedited special election schedule for the districts affected by the postponement of the 1992 election, rather than hold those special elections at later dates, such as the same dates as the regularly scheduled 1994 elections. Our analysis indicates that the county did not take adequate steps given the choice of an early election schedule to ensure that voters were made aware of the new district boundaries and, in particular, the locations of their residences within voting precincts split now between two or more districts. The latter point is particularly significant since the configurations of the new districts split sixteen of twenty-four precincts in comparison to only four split precincts under the old plan.

Moreover, it appears that there was confusion among minority voters in the April 1994 primary election, which was held without preclearance. We have received information that suggests that much of the confusion occurred in District 1, a district that includes a significant black registration majority under the new redistricting plan. Specifically, black voters were in some instances refused ballots without a sufficient explanation or opportunity to cast a ballot subject to challenge and, in at least one instance, received the wrong ballot from a poll worker. In that vein, we understand that not all poll workers were sufficiently familiar with the new redistricting maps to determine the location of minority voters' residences within the appropriate districts.

Insufficient publicity and distribution of the proposed redistricting plans apparently contributed to the voter confusion that marked the April 1994 primary election. The map was published in the local newspaper only once before the election was held. That paper is a weekly and apparently does not have a widespread circulation in the black community. The county appears to have abrogated to black candidates and other concerned citizens its responsibility to effectively inform its voters of the manner in which the new redistricting plans affected their opportunity to vote for district seats on the council and school board.

The circumstances presented by the instant submission suggest that the county's selection of the early schedule was motivated, at least in part, by a desire to diminish black voting potential. The implementation of the new redistricting plan effected significant changes in district assignments for many black voters. The increase in the black percentage in District 1 created a new opportunity for black voters to elect candidates of their choice. The county, however, failed to take adequate steps under these circumstances to publicize information regarding the

new district boundaries and to notify black voters (and election-day personnel) of their location in the respective districts in advance of the election. The consequence of these actions, which was reasonably foreseeable, was reduced black voter participation in the special primary election.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. See Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.52). In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that your burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the special election schedule (including the candidate qualifying period, the selection of an April 19, 1994 special primary election date; a May 3, 1994 special run-off election date; and a June 7, 1994, special general election date) for the county council and county school board in Lee County, South Carolina.

We note that under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed change has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. In addition, you may request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the special election schedule continues to be legally unenforceable. Clark v. Roemer, 111 S. Ct. 2096 (1991); 28 C.F.R. 51.10 and 51.45.

We understand that a special general election, under the now objected-to special election schedule, is to be held on June 7, 1994. The county has indicated that it intends to proceed with the special general election, even if an objection is interposed. This letter is to notify you that I have authorized the filing of a lawsuit to enforce the preclearance requirements of Section 5 of the Voting Rights Act with regard to the voting changes to which an objection has now been interposed. The action seeks declaratory and injunctive relief against further implementation of the special election schedule, unless and until preclearance is obtained, as well as remedial relief for the violation of the Voting Rights Act resulting from the previous implementation of the unprecleared election schedule.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us promptly of the action Lee County plans to take concerning this matter. If you have any questions, you should call Ms. Zita Johnson-Betts (202-514-8690), an attorney in the Voting Section.

Sincerely,

Deval L. Patrick
Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

JUN 23 1994

Helen T. McFadden, Esq.
Jenkinson, Jenkinson & McFadden
P. O. Drawer 669
Kingstree, South Carolina 29556

Dear Ms. McFadden:

This refers to your request that the Attorney General reconsider the June 6, 1994, objection under Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c, to the 1994 special election schedule (including the candidate qualifying period, the selection of an April 19, 1994, special primary election date, a May 3, 1994, special runoff election date, and a June 7, 1994, special general election date) for the county council and county school board in Lee County, South Carolina. We received your request on June 14, 1994.

We have reconsidered our earlier determination in this matter based on the information and arguments that you have advanced in support of your request, along with other information in our files and comments from other interested persons. Your request does not contain any new factual information. Rather, you suggest that we are erroneous in our conclusions, without providing any supporting documentation or relevant legal arguments in support of your contentions. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.45).

Specifically, our prior review showed that the county took inadequate steps to ensure that voters were made aware of the new district boundaries, and accompanying precinct changes, that were occasioned by our preclearance of the 1993 redistricting plan for the council and school board. Moreover, information made

available to us showed that this lack of publicity led to markedly lower black voter participation for the unprecleared April 19, 1994, special primary election as well as black voter confusion with regard to the location of their correct voting precincts for that election. You have not responded to our concerns that the county's election schedule was adopted, at least in part, to diminish black voting potential.

Your letter refers to the results of the April 19, 1994, special primary election at which a black candidate was elected to the school board from a white majority district and a white candidate to the county council from a black majority district as indicative of a lack of discriminatory intent on the part of the county in selecting the objected-to election schedule. However, your request does not provide any support for your conclusion that these election results respond adequately to the Section 5 concerns raised about black voter confusion in District 1 or the lack of notice of the new redistricting plans to the county's voters.

The county argues that conducting the special primary and general elections in April and June, respectively, and seating the winners shortly thereafter would enable the newly elected officials to participate in fiscal decisions for the county this year. The county has offered no evidence suggesting that this factor was considered by the council when it decided to adopt a truncated special election schedule. In any event, in satisfying its Section 5 burden, the county must demonstrate that the choices underlying the proposed change are not tainted, even in part, by an invidious discriminatory purpose; it is insufficient to establish that there are some legitimate, nondiscriminatory reasons for the voting change. See Village of Arlington Heights v. Metropolitan Housing Development Corp., 429 U.S. 252, 265-66 (1977); City of Rome v. United States, 446 U.S. 156, 172 (1980); Busbee v. Smith, 549 F. Supp. 494, 516-17 (D.D.C. 1982), aff'd, 459 U.S. 1166 (1983).

Finally, we have considered the county's contention that it has no authority under state law to delay its election of the three council and four school board seats at issue. However, it

appears that state law is silent on the issue of the holding of an election in situations where there are holdover incumbents. Thus, the county could have exercised its discretion in holding these special elections at a time when voter education and outreach regarding the new districts could have been accomplished. You have not provided any basis for us to alter our view that the proposed change will make it less likely that black voters will be able to elect their candidates of choice to the county council and to the school board.

In light of the considerations discussed above, I remain unable to conclude that Lee County has carried its burden of showing that the submitted change has neither a discriminatory purpose nor a discriminatory effect. See Georgia v. United States, 411 U.S. 526 (1973); 28 C.F.R. 51.52. Therefore, on behalf of the Attorney General, I must decline to withdraw the objection to the 1994 special election schedule (including the candidate qualifying period, the selection of an April 19, 1994, special primary election date, a May 3, 1994, special runoff election date, and a June 7, 1994, special general election date) for the county council and county school board.

As we previously advised, you may seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed change has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. We remind you that until such a judgment is rendered by that court, the objection by the Attorney General remains in effect and the proposed change continues to be legally unenforceable. See Clark v. Roemer, 111 S. Ct. 2096 (1991); 28 C.F.R. 51.10, 51.11, and 51.48(c) and (d).

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action Lee County plans to take concerning this matter. If you have any questions, you should call Zita Johnson-Betts (202) 514-8690, an attorney in the Voting Section.

Because the Section 5 status of the special election schedule is the subject of ongoing litigation in United States v. Lee County and NAACP v. Lee County, we are providing a copy of this letter to the court and counsel of record in those cases.

Sincerely,

Deval L. Patrick
Assistant Attorney General
Civil Rights Division

cc: The Honorable Donald S. Russell
United States Circuit Court Judge

The Honorable Joseph F. Anderson, Jr.
United States District Judge

The Honorable Dennis W. Shedd
United States District Judge

Counsel of Record

Paul Fata, Esq.

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

July 22, 1994

Gregory B. Askins, Esq.
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Jeffrey N. Thordahl, Esq.
Assistant Legal Counsel to
the Governor
P. O. Box 11369
Columbia, South Carolina 29211

Dear Messrs. Askins and Thordahl:

This refers to seven annexations (Young's Food Store, adopted May 8, 1986; Pine Crest, referendum held November 10, 1987, adopted December 10, 1987, and readopted February 11, 1988; the Hastings lot, adopted February 11, 1988; the Carmichael land, adopted April 14, 1988; the Eddy land, adopted June 9, 1988; the Dionne lot, adopted August 10, 1989; and the Wellman land, adopted December 12, 1991) and the postponement of the July 12, 1994, town election for the Town of Hemingway in Williamsburg County, South Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received Hemingway's response to our request for additional information concerning the annexations on May 23 and June 6, 1994. We also received the submission of the postponement of the town election on May 23, 1994.

This also refers to the submission under Section 5 of the proposed county boundary change that would transfer a portion of Williamsburg County to Florence County, South Carolina. We previously advised on April 1, 1994, that we were unable to make a determination at that time because this change is directly related to the annexations submitted by the Town of Hemingway and, on that date, we made a written request for additional information regarding the annexations. The receipt of the town's response accordingly also has reopened this matter.

We have carefully considered the information provided by the submitting authorities in these matters, as well as information from other interested persons. Based on this review, the Attorney General does not interpose any objection to the Young's Food Store and Wellman annexations, which we understand are only commercial in nature, and also do not object to the postponement of the July 1994 town election. However, we note that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the change. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41).

However, we are unable to reach the same conclusion with respect to the other annexations to the Town of Hemingway and the proposed county boundary change. Under Section 5, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. See Georgia v. United States, 411 U.S. 526 (1973); see also 28 C.F.R. 51.52. In this regard, a political boundary change may not be precleared that includes certain voters in a jurisdiction and leaves others outside based on racial considerations. City of Pleasant Grove v. United States, 479 U.S. 462 (1987); Perkins v. Matthews, 400 U.S. 379 (1971).

Turning first to the Hemingway annexations, the 1990 Census reports that Hemingway has a total population of 829, of whom three percent are black. According to the town, at the time the submitted annexations were adopted they had an all-white population of 302 (the town also indicates that since then the population in the annexed areas has decreased to 211 including three black residents). In addition, in 1976 the town obtained Section 5 preclearance for several annexations which at the time were reported as containing an all-white population of 45 residents.

At the time the submitted annexations were adopted, there were two significant population concentrations immediately adjacent to Hemingway, the all-white Pine Crest area which the town annexed in 1987, and the Donnelly area in which virtually all of the residents are black. The Donnelly area sought annexation in 1976 (at the time it had a population of about 850 according to newspaper reports). In the dual annexation referenda held in January 1977 (pursuant to state law), the Donnelly area voted almost unanimously for annexation but the town voted it down by a large margin. The Donnelly area remains interested in annexation, as evidenced by the recent petition it submitted to the town.

According to the town, its annexation decisions have been motivated by a concern for providing services to persons located outside the town limits, and the reason for the town's rejection

of the Donnelly annexation request was the expense that would have been involved in providing services to that area, primarily with regard to installing water and sewer lines in that community. However, the circumstances surrounding the Donnelly annexation request in the 1970s, and the town's approach to the similarly situated Pine Crest area, raise significant doubts as to the town's motivations.

Prior to the Donnelly annexation referendum, officials with the local regional planning agency stressed that if the town were to annex the Donnelly area, it would not be obligated to immediately undertake the water and sewer project, and that the town could seek federal funding for that effort. Indeed, just two and a half months after the negative referendum vote, the town did a turnabout on the question of assuming responsibility for the water and sewer project, agreeing to seek federal funding on Donnelly's behalf with the understanding that the town might be required to pay about 10 percent of the project. The funding then was obtained and the project was completed.

In mid-1980s, Pine Crest came to the town also seeking annexation to obtain water and sewer services. The town agreed to the annexation in order to provide these (and other) services, and obtained grants to pay for the water and sewer project. Prior to the Pine Crest annexation, the local regional planning agency studied the financial feasibility of annexing Pine Crest and Donnelly, and concluded that annexation of Donnelly would be appropriate but that annexation of Pine Crest would be problematic. Nevertheless, Pine Crest was annexed and Donnelly was not.

Turning now to the proposed county boundary line change, it is proposed that an area in the northeastern corner of Williamsburg County transfer to adjacent Florence County. The area at issue has a total population of about 2,500, of whom about 21 percent are black. Williamsburg County is 64 percent black in population while Florence County is 39 percent black.

This proposal is directly related to the Hemingway annexations because the town is included in the proposed transfer area and state law prohibits altering a county boundary in such a manner as to divide a town between two counties. The proposed transfer area does not include the Donnelly community. Thus, the town's discriminatory definition of its town boundaries in turn infects the definition of the proposed county transfer area.

In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that the Section 5 burden has been sustained with regard to these matters. Therefore, on behalf of the Attorney General, I must object to

the five residential annexations submitted by Hemingway and the proposed boundary change between Williamsburg and Florence Counties.

We note that under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed changes have neither the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. In addition, you may request that the Attorney General reconsider the objections. However, until the objections are withdrawn or a judgment from the District of Columbia Court is obtained, the five residential annexations continue to be legally unenforceable insofar as they affect voting, and the proposal to alter the Williamsburg/Florence county line also continues to be legally unenforceable. Clark v. Roemer, 111 S. Ct. 2096 (1991); 28 C.F.R. 51.10 and 51.45.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action you plan to take concerning these matters. If you have any questions, you should call Special Section 5 Counsel Mark Posner, at (202) 307-1388.

Sincerely,

Deval L. Patrick
Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

August 15, 1994

Thomas M. Boulware, Esq.
Brown, Jefferies & Boulware
P. O. Box 248
Barnwell, South Carolina 29812

Dear Mr. Boulware:

This refers to the adoption of a majority vote requirement for mayor and council for the City of Barnwell in Barnwell County, South Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your responses to our April 4, 1994, request for additional information on June 14, August 8, 11, and 12, 1994; supplemental information was received on August 5, 1994.

We have carefully considered the information you have provided, as well as 1990 Census data, information in our Section 5 files for other submissions from the city, and information and comments from other interested parties. According to the 1990 Census, black persons constitute 43 percent of the city's population and 37 percent of its voting age population. Based upon 1994 data, it appears that approximately 30 percent of the city's registered voters are black. The city is governed by a seven-member council, consisting of the mayor, elected at large, and six councilmembers who, pursuant to the election plan precleared on April 4, 1994, will be elected from single-member districts (previously, they also were elected at large). Three of the districts have black voting-age population majorities.

Our review of elections involving city voters indicates a pattern of racially polarized voting in Barnwell that has hampered the ability of black voters to elect their candidates of choice to at-large elected offices. Moreover, it appears that political participation among black voters is depressed, attributable largely to a history of racial discrimination which continues to be reflected in the disparate socio-economic conditions that exist between the city's black and white residents.

Accordingly, the adoption of a majority vote requirement for mayor will make it more difficult for black voters to elect their mayoral candidate of choice by increasing the probability of "head-to-head" contests between black and white candidates. See, e.g., Rogers v. Lodge, 458 U.S. 613, 627 (1982); City of Port Arthur v. United States, 459 U.S. 156 (1982). Thus, we cannot say that the city has demonstrated that the use of a majority vote requirement for the at-large elected mayor will not "lead to a retrogression in the position of . . . minorities with respect to their effective exercise of the electoral franchise." Beer v. United States, 425 U.S. 130, 141 (1976).

The city asserts that state law requires the use of a majority vote requirement for the at-large elected mayor if it also is used for councilmembers elected from single-member districts. We recognize that a majority vote requirement in a single-member district system does not raise the same concerns as its use in at-large elections. However, in determining whether to adopt this requirement for all elected positions, city officials did not seek the views of the minority community (e.g., the city did not appoint minority persons to the study committee for the new method of election, which appears to have recommended the adoption of the majority vote requirement). When their views were sought post-adoption, black leaders advised the city that a plurality vote requirement for both mayor and council would be preferable.

The city also states that it adopted the majority vote requirement because it "wanted to return to the method of election that it had enjoyed prior to the Federal Court Order." This "method of election," however, was the city's use of a majority vote requirement for both the mayor and city council to which the Attorney General interposed a Section 5 objection on August 31, 1984. Notwithstanding our objection, the city continued to use a majority vote requirement until enjoined by the referenced court order in 1986.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.52). In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that the city's burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the use of a majority vote requirement insofar as it applies to mayoral elections.

We note that under Section 5 you have the right to seek a declaratory judgment from the United States District Court for

the District of Columbia that the proposed change has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. See 28 C.F.R. 51.44. In addition, you may request that the Attorney General reconsider the objection. See 28 C.F.R. 51.45. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the use of a majority vote requirement continues to be legally unenforceable. See Clark v. Roemer, 111 S. Ct. 2096 (1991); 28 C.F.R. 51.10.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the City of Barnwell plans to take concerning this matter. If you have any questions, you should call Ms. Zita Johnson-Betts (202-514-8690), an attorney in the Voting Section.

Sincerely,

Deval L. Patrick
Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

October 3, 1994

C. Havird Jones, Jr., Esq.
Assistant Attorney General
Public Interest Litigation
P. O. Box 11549
Columbia, South Carolina 29211-1549

Dear Mr. Jones:

This refers to Act R.376 (1994), which provides for the change from a partisan to a nonpartisan election system, including candidate qualifying procedures and filing fees, for the board of trustees for the Georgetown County School District in Georgetown County, South Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your responses to our July 18, 1994, request for additional information on August 2, September 8, 12, 21, 22, and 23, 1994.

We have carefully considered the information you have provided, as well as Census data and information from other interested persons. According to the 1990 Census, the Georgetown County School District has a total population of 46,302, of whom 43.2 percent are black; black voters represent 35 percent of the registered voters. School board members are elected at large, by majority vote to staggered, four-year terms of office. Local elections are marked by an apparent pattern of racially polarized voting and significant disparities exist in socio-economic conditions that appear to hamper minority political participation.

Despite these obstacles, black voters have enjoyed a measure of success in electing candidates of their choice to the school board. Much of this success appears dependent, in the context of the at-large election system, upon the partisan nature of elections. Black-supported candidates that have been elected to the board of trustees were nominated in partisan primary elections in which black voters represented a larger percentage of the electorate than they represent in general elections, where trustees would be chosen under the proposed nonpartisan system. In addition, our analysis has revealed other advantages of the

partisan system for minority-supported candidates, including, for example, access to biracial forums and straight-ticket voting.

Implementation of nonpartisan elections, in the context of the at-large election system described above, appears likely to deprive black-supported candidates of meaningful partisan-based support and to exacerbate racial polarization between black and white voters, thereby diminishing the opportunity that would otherwise exist for black voters to elect their candidates of choice to the school board. See, e.g., Sierra v. El Paso Independent School District, 591 F.Supp. 802, 808-11 (W.D. Tex. 1984). Under these circumstances, the change to nonpartisan elections constitutes an impermissible retrogression in the position of the affected minority group in the political process, a situation that has the effect of denying or abridging the right to vote on account of race or color. See Beer v. United States, 425 U.S. 130 (1976).

We note, furthermore, that the views of the black community were not sought in advance of the change nor were the concerns voiced by black trustees about its racial impact heeded by the sponsors of Act R.376.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.52). In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that your burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the change to nonpartisan elections for the school board occasioned by Act R.376 (1994).

We note that under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed change has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. See 28 C.F.R. 51.44. In addition, you may request that the Attorney General reconsider the objection. See 28 C.F.R. 51.45. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the change to nonpartisan elections continues to be legally unenforceable. See Clark v. Roemer, 500 U.S. 646 (1991); 28 C.F.R. 51.10.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the State of South Carolina plans to take on behalf of the Georgetown County School District concerning this matter. In particular, we are aware that primary elections for school board seats were not conducted this year in anticipation of the change to nonpartisan elections in November 1994. In light of the objection interposed herein to nonpartisan elections, please inform us of the specific steps that will be taken to rectify this situation. If you have any questions, you should call Ms. Zita Johnson-Betts (202-514 8690), an attorney in the Voting Section.

Sincerely,

Kerry Alan Scanlon
Acting Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

October 17, 1994

James E. Gonzales, Esq.
Gonzales & Gonzales
P. O. Box 60715
North Charleston, South Carolina 29419-0715

Dear Mr. Gonzales:

This refers to eight annexations (Ordinances Nos. 1992-43, 44, 45, and 57, 1993-4, and 1994-8, 9, and 12) to the City of North Charleston in Berkeley, Charleston, and Dorchester Counties, South Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. On August 18, 1994, we received your most recent response to our January 3, 1994, request for additional information with respect to five of the submitted annexations, which also constituted your response to our August 9, 1994, request for additional information with respect to the other three submitted annexations.

We have carefully considered the information you have provided, as well as information from other interested persons and information provided by the city in its prior annexation submissions. According to the 1990 Census, North Charleston has a total population of 70,218, of whom 34 percent are black. Since its incorporation in 1972, the City of North Charleston has been a strong advocate of annexation. The city has grown more than sevenfold in geographic area since 1972 and has more than tripled in population. At least since the early 1980s, its annexation efforts appear generally to have been directed at adjacent areas that are heavily white in population. Our records indicate that about 85 percent of the persons annexed in the 1980s were white and, similarly, the post-1990 annexations (including the annexations now before us for preclearance) are, as group, 85 percent white in population.

While the city has annexed these white-populated areas, communities that have not been annexed and are overwhelmingly black in population are located along the southern border of the city; indeed, several of these black residential areas are located in "doughnut holes" formed by the city's prior annexation of surrounding territory. Recently, a number of these areas have expressed interest in annexation. The Union Heights area submitted an annexation petition to the city, but has not been annexed, while we understand that other black-populated areas are in the process of circulating annexation petitions.

The Union Heights annexation petition was rejected by the city while the areas included in the submitted annexations were accepted. Ostensibly, the rejection was because its petition was technically deficient and because the petition did not include the minimum number of signatures required by South Carolina law. In other annexation efforts, however, the city itself typically has assumed responsibility for preparing the technical aspects of an annexation petition (e.g., the annexation area map and legal description). Similarly, when past petitions have fallen short of the necessary number of signatures, the city has redrawn the annexation map to narrow the size of the proposed annexation area. The city has failed to explain why these same steps were not taken with the Union Heights petition.

Under Section 5 of the Voting Rights Act, a covered jurisdiction has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. See Georgia v. United States, 411 U.S. 526 (1973); see also 28 C.F.R. 51.52. To demonstrate the absence of discriminatory purpose with respect to annexations, a jurisdiction must demonstrate that the revision of boundary lines to "includ[e] certain voters within the city [while] leaving others outside," was not based, even in part, on race. Perkins v. Matthews, 400 U.S. 379, 388 (1971). See also City of Pleasant Grove v. United States, 479 U.S. 462 (1987). In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that the city has sustained its burden by showing that, regardless of the race of those seeking annexation, adjacent areas are provided an equal opportunity to obtain annexation to the city. Therefore, on behalf of the Attorney General, I must object to the submitted annexations.

We note that under Section 5 the City of North Charleston has the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the annexations have neither the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. In addition, the city may request that the Attorney

General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the annexations continue to be legally unenforceable insofar as they affect voting. Clark v. Roemer, 500 U.S. 646 (1991); 28 C.F.R. 51.10 and 51.45.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the City of North Charleston plans to take concerning this matter. If you have any questions, you should call Special Section 5 Counsel Mark A. Posner, at (202) 307-1388.

Sincerely,

Deval L. Patrick
Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

DEC 13 1994

C. Havird Jones, Jr., Esq.
Assistant Attorney General
Public Interest Litigation
P.O. Box 11549
Columbia, South Carolina 29211-1549

Dear Mr. Jones:

This refers to Act R.631 (1994), which provides for the abolishment of the elected Spartanburg County Board of Education and its replacement with the appointed Spartanburg Education Oversight Committee for the Spartanburg County School District in Spartanburg County, South Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your responses to our August 15, 1994, request for additional information on October 14 and November 29, 1994; supplemental information was received on November 30 and December 1 and 5, 1994.

We have carefully considered the information you have provided, as well as Census data and information and comments from other interested parties. According to the 1990 Census, the county has a total population of 226,800 persons, of whom 20.6 percent are black. Under the system of electing county school board members in effect prior to 1994, no black persons were elected to the county board of education, due largely to an apparent pattern of racially polarized voting. On April 26, 1994, a consent decree was entered in NAACP v. Spartanburg County Board of Education, C.A. No. 7:91-3111-20 (D.C.S.C., filed October 11, 1991), that changed the method of electing county board members from at-large elections within each local school district to sixteen single-member districts. Three of the single-member districts included majority black populations, so that black voters will have an opportunity to elect two or three seats on the sixteen-member body. On August 15, 1994, the Attorney General precleared this change in the method of electing the Spartanburg County Board of Education.

The state now proposes through Act R.631 to abolish the elected Spartanburg County Board of Education and replace it with an appointed Education Oversight Committee. The members of the Education Oversight Committee will be selected by a majority of the elected members of the county's seven local school boards, who are predominantly white. Under these circumstances, it appears that black voters will have considerably less influence over the selection of members of the Spartanburg County Education Oversight Committee through the choices of the appointing local school boards than they currently have under the direct-election system now in place for the Spartanburg County Board of Education, and will "lead to a retrogression in the position of . . . minorities with respect to their effective exercise of the electoral franchise." Beer v. United States, 425 U.S. 130, 141 (1976).

The sequence of events surrounding the adoption of Act R.631 also gives rise to an obvious inference of discriminatory purpose. Based on the information supplied by you and many others, we have not been persuaded that it is coincidental that the state abolished the county board only after a new method of election was in place that promised equal minority electoral opportunity, and replaced it with an appointed body on which minority voters will have little opportunity to influence appointments.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. See Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.52). The existence of some legitimate, nondiscriminatory reasons for the voting change does not satisfy this burden. See Village of Arlington Heights v. Metropolitan Housing Development Corp., 429 U.S. 252, 265-66 (1977); see also City of Rome v. United States, 446 U.S. 156, 172 (1980); Busbee v. Smith, 549 F. Supp. 494, 516-17 (D.D.C. 1982), aff'd, 459 U.S. 1166 (1983). In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that the state's burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to Act R.631, which replaces the previously elected county board of education with the appointed Education Oversight Committee.

We note that under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed change has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. In addition, you may request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the change occasioned by Act R.631 (1994) continues to be legally unenforceable. Clark v. Roemer, 500 U.S. 646 (1991); 28 C.F.R. 51.10 and 51.45.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the State of South Carolina plans to take on behalf of the Spartanburg County School District concerning this matter. If you have any questions, you should call Ms. Zita Johnson-Betts (202-514-8690), an attorney in the Voting Section.

Sincerely,

Deval L. Patrick
Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

February 6, 1995

Helen T. McFadden, Esq.
P.O. Box 1114
Kingstree, South Carolina 29556

Dear Ms. McFadden:

This refers to the 1994 redistricting plan for the City of Bennettsville in Marlboro County, South Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your responses to our July 18 1994, request for additional information on September 16, November 15, December 6, 1994 and January 14, 1995.

We have carefully considered the information you have provided, as well as information and comments from other interested persons. The black population percentage has grown substantially since the 1980 Census count. According to the 1990 Census, black persons now represent 57.3 percent of the total population, compared to 48.6 percent in 1980. Black persons represent 52.5 percent of the current voting age population. The city is governed by a six-member council and a mayor who has a full vote on the council. The mayor is elected at large. The six councilmembers are elected from single-member districts. Four of the districts have black majorities in voting age population.

Single-member districts are a recent development in Bennettsville, having been first implemented in 1990. They were adopted to settle litigation brought under Section 2 of the Voting Rights Act, 42 U.S.C. 1973, concerning the racially dilutive effect of the city's at-large method of election on black voters, NAACP v. City of Bennettsville, No. 4:89-1655-2, and United States v. City of Bennettsville, No. 4:89-2363-2 (D.S.C. 1989). Prior to the use of single-member districts, no more than one minority person had ever served on the council simultaneously. As a result of the change to the existing method of election, black voters have elected candidates of their choice to three of the four single-member districts with black majorities.

In 1989, when the existing districting plan was drawn to settle the lawsuits, 1980 Census data were used because the 1990 Census data were not yet available. Despite the availability of 1990 Census data in 1994 when the proposed redistricting plan was being drawn, the city chose to use the existing districts under 1980 Census data as the benchmark by which to compare the proposed districts. The appropriate basis for comparison are the conditions existing at the time of the submission, which in this instance is the existing plan using the 1990 Census data, See City of Rome v. United States, 446 U.S. 156, 186 (1980); State of Texas v. United States, 866 F. Supp. 20 (D.D.C. 1994); Procedures for the Administration of Section 5, 28 C.F.R. 51.54(b)(2).

It appears that the city used the 1980 Census data as the benchmark because it creates the appearance that the proposed plan maintains the status quo with regard to District 4. When the black voting age population in proposed District 4 is compared to the black voting age population in existing District 4 under the 1980 Census data, the percentages are nearly identical (58.4 and 58.7 percent, respectively). However, when the black voting age population in proposed District 4 is compared to the black voting age population in existing District 4 under the 1990 Census data, the percentages are significantly different (58.4 and 64.2 percent, respectively).

Under the 1990 Census data, existing District 4 was overpopulated by about 200 persons. Instead of simply transferring the excess population to neighboring districts which were slightly underpopulated, the city chose to completely reconfigure District 4. The result is that the black voting age population is unnecessarily reduced from 64.2 percent to 58.4 percent.

The reduction of the black population percentage in District 4 appears to have been designed to protect the incumbent who currently represents District 4. Given that black voters were unable to elect their candidate of choice in the 1990 election in existing District 4, the reduction in the black percentage in proposed District 4 combined with the apparent lower registration and turnout rates for black persons of voting age, and the substantial reconfiguration of the district, it is unlikely that black voters will have an equal opportunity to elect a candidate of choice in proposed District 4.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. Georgia v. United States, 411 U.S. 526 (1973); 28 C.F.R. 51.52. The city has not met its burden of showing that, in these circumstances, the reduction of the black percentage in

District 4 will not "lead to a retrogression in the position of . . . minorities with respect to their effective exercise of the electoral franchise." Beer v. United States, 425 U.S. 130, 141 (1976). Nor has the city met its burden with regard to showing an absence of racially discriminatory purpose. While protecting incumbency certainly is not in and of itself an inappropriate consideration, it may not be accomplished at the expense of minority voting potential. Garza v. Los Angles County, 918 F.2d 763, 771 (9th Cir. 1990), cert. denied, 498 U.S. 1028 (1991); Ketchum v. Byrne, 740 F.2d 1398, 1408-09 (7th Cir. 1984), cert. denied, 471 U.S. 1135 (1985).

In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that your burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the 1994 redistricting plan for the City of Bennettsville.

We note that under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed change has neither a discriminatory purpose nor effect. 28 C.F.R. 51.44. In addition, you may request that the Attorney General reconsider the objection. See 28 C.F.R. 51.45. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the 1994 redistricting plan continues to be legally unenforceable. See Clark v. Roemer, 500 U.S. 646 (1991); 28 C.F.R. 51.10.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action that the City of Bennettsville plans to take concerning this matter. If you have any questions, you should call Colleen M. Kane, an attorney in the Voting Section (202-514-6336).

Sincerely,

Deval L. Patrick
Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General *Washington, D.C. 20530*

February 13, 1995

Thomas M. Boulware, Esq.
Brown, Jefferies & Boulware
P.O. Box 248
Barnwell, South Carolina 29812

Dear Mr. Boulware:

This refers to the request by the City of Barnwell in Barnwell County, South Carolina, that the Attorney General reconsider the August 15, 1994, objection under Section 5 of the Voting Rights Act, 42 U.S.C. 1973c, to the majority vote requirement as it applies in mayoral elections, and grant Section 5 preclearance to the postponement of the 1994 city election, pending resolution of the city's reconsideration request. We received your request for reconsideration of the objection, and your response to our request for additional information regarding the postponement of the city election, on December 15, 1994; supplemental information was received on February 9 and 13, 1995.

On December 6, 1993, the city adopted an ordinance which provided for a change in the method of electing the six councilmembers and mayor from at large to election from six single-member districts and the mayor at large. The ordinance also provided for a districting plan, a change from concurrent terms to staggered terms, the implementation schedule for staggering of terms, and a change from plurality vote to majority vote for election to all city offices. On April 4, 1994, the Attorney General interposed no objection to these changes except to the majority vote as it applies to mayoral elections.

Pursuant to 28 C.F.R. 51.48 of the Procedures for the Administration of Section 5, we have reconsidered our earlier determination in this matter based on the information you have provided, as well the other information in our files, comments from other interested persons, and our analysis of the electoral circumstances in the City of Barnwell.

Our analysis on reconsideration indicates that the August 15, 1994, objection interposed to the majority vote requirement as it applies to mayoral elections should be and is hereby withdrawn. With regard to the postponement of the 1994 city election for mayor and council, the Attorney General does not interpose any objection to this change. However, we note that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of these voting changes. See 28 C.F.R. 51.41.

In view of the withdrawal of the objection, we understand the city agrees that the legal method of election in Barnwell under federal and state law is embodied in the December 6, 1993, ordinance that now has been precleared in its entirety. We note that because of the postponement of the 1994 election, the city's current mayor and council are holding over past the expiration of their terms of office and, accordingly, the city must now promptly develop and seek preclearance under Section 5 for a schedule for holding a special election to implement the precleared method of election as soon as practicable. See 28 C.F.R. 51.17. Please contact Chris Herren, (202-514-1416), an attorney in the Voting Section, as soon as possible to inform us of your plans to schedule this election.

Sincerely,

Loretta King

Loretta King
Acting Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

November 20, 1995

C. Havird Jones, Jr., Esq.
Assistant Attorney General
Public Interest Litigation
P.O. Box 11549
Columbia, South Carolina 29211-1549

Dear Mr. Jones:

This refers to Act R.66 (1995) and Section 19.67 of the 1995-96 State Government Appropriations Act for the State of South Carolina concerning the Spartanburg County School District in Spartanburg County, South Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your response to our July 17, 1995, request for additional information on September 20, 1995.

We have carefully considered the information that you have provided, as well as Census data, information and comments from other interested parties, and other information in our files. According to the 1990 Census, the county has a total population of 226,800 persons, of whom 20.6 percent are black. Act R.66 (1995) appears to transfer some, but not all, of the powers and duties of the county board of education for the Spartanburg County School District to the county's seven local school districts, and to reduce the amount of funds that can be allocated from the minimum foundation fund to the county board of education to cover its operating costs. Contrary to Act R.66 (1995), Section 19.67 of the 1995-96 State Government Appropriations Act allocates minimum foundation funds directly to the seven local school districts for the 1995-96 school year and prohibits any such funds from going to the county board of education. With regard to the overall effect of Section 19.67, the information you provided indicates that Section 19.67 jeopardizes the continued existence of the county board by eliminating all funds for its operation in the 1995-96 fiscal year.

The Supreme Court in Presley v. Etowah County Commission, 112 S. Ct. 820 (1992), held that transfers of power among elected officials and adjustments to their budgets generally do not constitute voting changes with respect to Section 5, except in instances where the transfer of power or budget adjustment rises to the level of a de facto elimination of the elected official's office. Id. at 831. Our review of the available information regarding the effect of Act R.66 (1995) indicates that while significant powers and duties of the county board have been transferred to the local school boards, the county board retains substantial powers and duties (similar to those proposed for an appointed education oversight committee in 1994), although it will have a very limited budget with which to perform those duties. We conclude, therefore, that Act R.66 (1995) does not constitute a voting change within the meaning of Section 5. Accordingly, no Section 5 determination by the Attorney General is necessary or appropriate with regard to this matter. See 28 C.F.R. 51.35.

We cannot reach the same conclusion with regard to Section 19.67 of the 1995-96 State Government Appropriations Act. Your response to our request for additional information and other available information indicate that Section 19.67 will, in effect, prevent the county board from carrying out the duties assigned to it under Act R.66 (1995), because the board will have no money to fund its operating costs. It appears, therefore, that the change embodied in Section 19.67 affects voting because it results in the de facto elimination of the county board (at least for one year) within the meaning of the exception recognized by the Court in Presley. On this basis, we conclude that Section 19.67 is a voting change subject to review under Section 5.

We review Section 19.67 against the backdrop of the objection interposed last year under Section 5 to the state's proposed abolishment of the county board and its replacement with an appointed education oversight committee selected by a majority of the members of the predominantly white boards of the local school districts. We interposed an objection to the 1994 change (Act R.631 (1994)) based on concerns regarding its retrogressive effect and the state's purpose in adopting the change. We concluded that the state had not met its Section 5 burden of proof regarding the absence of a discriminatory purpose given the sequence of events surrounding the enactment of Act R.631, and, particularly, the adoption of the change only after a new method of election was in place for the county board that promised equal minority electoral opportunity.

It appears that Section 19.67 raises the same concerns that formed the basis for our objection to Act R.631 (1994). For example, in February 1995 the first black representatives were elected to the sixteen-member county board of education pursuant to the board's new single-member district method of election. In April 1995 the state adopted Act R.66 (1995), which, while restructuring the county board and decreasing its funding, left the county board intact. Under Section 19.67, the county board would be effectively eliminated and minority voters would lose their newly-won electoral opportunities on that body. We understand, furthermore, that Section 19.67 was introduced in the state legislature after passage of Act R.66 (1995), in disregard of the views of other members of the local legislative delegation, in order to override the funding authorized for the county board in Act R.66 (1995) and, in effect, to eliminate the county board. The sponsor of Section 19.67 is the same legislator who sponsored the objected-to Act R.631 (1994). Moreover, the state has offered no legitimate, nondiscriminatory reason for the changes contained in Section 19.67.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.52). In light of the considerations discussed above, I cannot conclude that your burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to Section 19.67 of the 1995-96 State Government Appropriations Act.

We note that under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed change neither has the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. See 28 C.F.R. 51.44. In addition, you may request that the Attorney General reconsider the objection. See 28 C.F.R. 51.45. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, Section 19.67 continues to be legally unenforceable. Clark v. Roemer, 500 U.S. 646 (1991); 28 C.F.R. 51.10.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the State of South Carolina plans to take on behalf of the Spartanburg County School District concerning this matter. If you have any questions, you should call Zita Johnson-Betts (202-514-8690), an attorney in the Voting Section.

Sincerely,

Deval L. Patrick
Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

March 5, 1996

James R. Thompson, Esq.
Saint-Amand, Thompson & Brown
210 South Limestone Street, Suite 1
Gaffney, South Carolina 29340-3014

Dear Mr. Thompson:

This refers to the change in the method of election from single-member districts to at large for the Board of Public Works for the City of Gaffney in Cherokee County, South Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your response to our November 6, 1995, request for additional information on January 5, 1996.

We have considered carefully the information provided in this submission and in the submission of the 1994 change to single-member districts, as well as Census data and information and comments received from other interested persons. As you know, Section 5 preclearance was accorded the 1994 change in the method of election from at large to single-member districts on July 12, 1994.

The Board of Public Works is elected from an area that is coterminous with the City of Gaffney. According to the 1990 Census, black persons represent 39 percent of the City's total population (13,145) and 34 percent of its voting age population (9,631). These figures represent significant growth from the 1980 black population percentages (32 and 28 percent, respectively). The city's six member council is elected from single-member districts (two of which are majority-black). Currently, the Board's five commissioners are elected from single-member districts (two of which are majority black) to six year, staggered terms.

Conditions in the City of Gaffney are those found typically in areas in which black voters have had difficulty in electing candidates of choice under at-large methods of election.

Historically, black citizens have been subjected to discrimination in voting and related areas by the State of South Carolina, Cherokee County, and the City of Gaffney. Significant socio-economic disparities exist between black and white residents, suggesting that black persons continue to suffer from the lingering effects of that discrimination. These disparities have hampered their ability to participate in the political process. Racial tensions and hostilities are apparent in many of the interactions between black and white officials, See Transcripts of Board Meetings, July 18, August 1, September 5, 1995. And finally, elections in Gaffney appear to be characterized by a pattern of racially polarized voting. In every governmental entity in Cherokee County in which an at-large method of election has been employed, no more than one black official has ever served at any one time. Only after single-member districts were adopted has more than one black official been elected to any of these boards or councils.

Because these conditions limited the opportunity of black voters under the at-large system to elect candidates of choice, minority voters represented by the local NAACP requested that the Board change its method of election in 1994 to single-member districts. The NAACP presented a districting plan to the Board that we are told was drawn by taking into account visible boundaries such as roads and railroad tracks, compactness and contiguity of the districts, the protection of incumbents where possible, and recognition of minority voting strength (two of the five districts had majority-black populations). We understand that although no lawsuit had been threatened, the Board adopted the districting plan suggested by the NAACP because it believed it was necessary to comply with federal law and did not want to risk becoming embroiled in a lawsuit that might postpone the 1994 elections. Apparently, the commissioners believed that because most, if not all, of the governing entities in the County had adopted single-member districting plans, they would have to follow suit or risk being sued under Section 2 of the Voting Rights Act, 42 U.S.C. 1973.

Despite the ameliorative nature of this change to a single-member districting plan, the Board of Public Works now seeks to return to its prior at-large method of election. Because readopting the at-large system will make it more difficult for minority voters to elect candidates of choice, the Board has not met its burden of showing that the proposed change will not "lead to a retrogression in the position of . . . minorities with respect to their effective exercise of the electoral franchise." Beer v. United States, 425 U.S. 130, 141 (1976).

The Board claims that the at-large system was readopted because the NAACP considered race in the development of the existing districting plan and "contorted" those districts to create two that are majority-black in population. In the Board's

view, the existing single-member districting system therefore violates the Equal Protection clause of the Fourteenth Amendment as described in Miller v. Johnson, 115 S. Ct. 2475 (1995). We disagree that Miller stands for the proposition that race may never be a consideration in the adoption of a voting change or that majority-black districts may never be created, see Miller, 115 S. Ct. at 2488; see also DeWitt v. Wilson, 856 F. Supp. 1409 (E.D. Cal. 1994), aff'd in part and dismissed in part, 115 S.Ct. 2637 (1995) and note that the Board's attorney cautioned against such an expansive reading, see August 1, 1995, Board Meeting Transcript at p. 16-17.

The Board's reliance on the Miller decision as justification for the change appears pretextual. The commissioners readopted the at-large election system in 1995 despite the awareness gained during the 1994 deliberations on the change to single-member districts in which it became apparent that in Gaffney at-large election systems unnecessarily minimize the ability of black voters to elect candidates of choice. In this same vein, the commissioners appear to have ignored their attorney's interpretation of Miller and his caution not to be too quick to apply an untested decision. It appears that the commissioners ignored his advice because they wanted to prevent the 1996 elections in the two majority-black districts from going forward. Moreover, at least one commissioner stated that his reason for sponsoring the readoption of the at-large system is to avoid "minority" control of the Board.

In addition, it appears that the Board departed from its normal procedural sequence of holding public hearings and soliciting the views of the black community. In fact, the Board had no intention of making anyone, including the black community, aware of the proposal to return to the at-large system. Had it not been for the black commissioner and an alert member of the NAACP who noticed in a newspaper announcement that single-member districts were on the Board's agenda, it appears that the black community would have been unaware of the proposed plan to change the Board's method of election. Once the black community became aware of the Board's proposal to readopt an at-large system, they spoke publicly (e.g., in the newspaper and at board meetings) about the reasons why they believed that a return to an at-large system would worsen the electoral opportunities of black voters. However, without any discussion of the NAACP's concerns, the Board voted three to one, with one abstention, to return to the at-large system. The sole black commissioner on the Board voted against the proposed plan.

Thus, in light of the above facts and given the Board's awareness of the potentially retrogressive effect of the return to the at-large system, we cannot conclude that the Board has met its burden of proving that the proposal to return to the at-large system is free from a racially discriminatory purpose.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. Georgia v. United States, 411 U.S. 526 (1973); Procedures for the Administration of Section 5, 28 C.F.R. 51.52. Nothing in the Supreme Court's holding in Miller alters this burden. Moreover, the mere existence of some legitimate, nondiscriminatory reasons for the voting change is insufficient to satisfy this burden. See Village of Arlington Heights v. Metropolitan Housing Development Corp., 429 U.S. 252, 265-68 (1977); City of Rome v. United States, 446 U.S. 156, 172 (1980); Busbee v. Smith, 549 F. Supp. 494, 516-17 (D.D.C. 1982), aff'd, 459 U.S. 1166 (1983).

In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that your burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the readoption of the at-large method of election.

We note that under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed change neither has the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. See 28 C.F.R. 51.44. In addition, you may request that the Attorney General reconsider the objection. See 28 C.F.R. 51.45. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the change to an at-large method of election continues to be legally unenforceable. Clark v. Roemer, 500 U.S. 646 (1991); 28 C.F.R. 51.10.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the Board of Public Works plans to take concerning this matter. If you have any questions, you should call Colleen M. Kane (202-514-6336), an attorney in the Voting Section.

Sincerely,

Deval L. Patrick
Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

AUG 20 1996

J. Brady Hair, Esq.
City Attorney
Post Office Box 190016
North Charleston, South Carolina 29419-9016

Dear Mr. Hair:

This refers to 31 annexations adopted from 1995 to 1996 (listed on Attachment A) and the designation of the annexed areas to districts for the City of North Charleston in Berkeley, Charleston and Dorchester Counties, South Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your submission of these annexations on April 29, 1996; supplemental information was received on June 14, 21, 24, 25, 26, 27, and 28, and July 26, 1996.

This also refers to five annexations (Ordinance Nos. 1994-21 and 31, and 1996-18, 24 and 25) and the designation of the annexed areas to districts. We received your submissions on July 5 and 19, 1996; supplemental information was received on July 22, 23 and 26, 1996.

Finally, this refers to your request that the Attorney General reconsider and withdraw the October 17, 1994, objection interposed under Section 5 of the Voting Rights Act, 42 U.S.C. 1973c, to eight annexations (Ordinance Nos. 1992-43, 44, 45, and 57, 1993-4, and 1994-8, 9 and 12) to the City of North Charleston. We received your request on April 29, 1996; supplemental information was received on June 21 and 27, and July 26, 1996.

With regard to the 31 annexations identified on Attachment A and the five annexations adopted pursuant to Ordinance Nos. 1994-21 and 31, 1996-18, 24 and 25, the Attorney General does not interpose any objection to the specified changes. However, we

note that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the changes. In addition, as authorized by Section 5, we reserve the right to reexamine these submissions if additional information that would otherwise require an objection comes to our attention during the remainder of the sixty-day review period. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41 and 51.43).

We note that the annexations that have been precleared include areas located along the southern border of the city that are predominantly black in population, such as those areas annexed in the Union Heights community. The city's previous failure to annex such areas formed the basis for our previous conclusion that the city had failed to establish that its annexation policies were racially nondiscriminatory. The annexation of these areas resolves our prior concerns.

Accordingly, pursuant to Section 51.48(b) of the Procedures for the Administration of Section 5 (28 C.F.R.), the objection interposed to eight annexations (Ordinance Nos. 1992-43, 44, 45, and 57, 1993-4, and 1994-8, 9 and 12) is hereby withdrawn. However, we note that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the changes. See 28 C.F.R. 51.41.

Sincerely,

Deval L. Patrick
Assistant Attorney General
Civil Rights Division

ATTACHMENT A

ORDINANCE NUMBER	DATE ADOPTED
1995-18	5/25/95
1995-24	6/29/95
1995-25	7/13/95
1995-26	7/13/95
1995-32	8/10/95
1995-33	8/24/95
1995-36	9/14/95
1995-43	9/28/95
1995-44	9/28/95
1995-45	9/28/95
1995-46	10/12/95
1995-47	10/12/95
1995-48	10/12/95
1995-49	10/12/95
1995-64	12/14/95
1995-65	12/14/95
1995-66	12/14/95
1995-73	12/28/95
1995-74	12/28/95
1995-75	12/28/95
1995-76	12/28/95
1995-77	12/28/95
1995-78	12/28/95
1995-79	12/28/95
1995-80	12/28/95
1995-81	12/28/95
1995-82	12/28/95
1995-83	12/28/95
1995-84	12/28/95
1996-07	2/22/96
1996-08	2/22/96

Civil Rights Division

Deputy Assistant Attorney General

Washington, D.C. 20530

April 1, 1997

The Honorable John W. Drummond
President Pro Tempore of the
South Carolina Senate
Attn: Mark Packman
Dickstein, Shapiro, Morin, & Oshinsky
2101 L Street, N.W.
Washington, D.C. 20037-1526

Dear Mr. Drummond:

This refers to Act No. R.2 (1997), insofar as it provides for the 1997 redistricting plan for the South Carolina Senate, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your submission on February 19, 1997; the most recent supplemental information concerning your submission was received on March 25, 1997.

We have carefully considered the information you have provided, as well as Census data and information and comments from other interested persons. The Voting Rights Act requires that the submitting authority demonstrate that the proposed change neither has a discriminatory purpose nor a discriminatory effect. Georgia v. United States, 411 U.S. 526 (1973); see also Procedures for the Administration of Section 5, 28 C.F.R. 51.52. In Beer v. United States, the Supreme Court made clear that a voting change which diminishes "the ability of minority groups to participate in the political process and to elect their choices to office" is retrogressive and should not be precleared under Section 5. 425 U.S. 130, 141 (1976), quoting H.R. Rep. No. 94-196, p.60 (1975).

The appropriate benchmark used to determine whether a voting change makes minority voters worse off is "the voting practice or procedure in effect at the time of the submission," so long as the existing voting practice is legally enforceable under Section 5. See Procedures for the Administration of Section 5, 28 C.F.R. 51.54(b). We recognize that there may be a need to reduce minority voting strength to some extent in order to comply with the order in Smith v. Beasley, 946 F. Supp. 1174 (D.S.C. 1996), and revisions tailored to address those problems would not be unlawful under Section 5. Thus, in the circumstances of this submission, the senate redistricting plan embodied in Act No. 49 (1995), modified to address the constitutional infirmities in that plan identified by the court, constitutes the appropriate benchmark for measuring retrogression.

In the case of a statewide redistricting, Section 5 requires us not only to review the overall impact of the plan on minority voters, but also to understand the reasons for and the impact of each of the legislative choices that were made in adopting the particular plan. The submitted plan provides for nine districts with black voting age population majorities. The 1995 plan provides for eleven such districts. In its submission of Act No. R.2, the state acknowledges that the submitted plan reduces the black population significantly in senate Districts 29 and 37. Under the submitted plan, District 29 is reduced from 56.2 percent black in voting age population to 41.5 percent. District 37 is reduced from 55.5 percent black in voting age population to 42.6 percent. Thus, under the submitted plan, both districts no longer have black voting age population majorities. In the context of the racially polarized voting patterns that the court found to exist, see Smith, 946 F. Supp. at 1202, these reductions will significantly hinder black voters' electoral opportunities in these districts.

The state justifies these substantial reductions by asserting that they were necessary to comply with the court's order in Smith. The Smith court held that senate Districts 29, 34, and 37 were drawn with race as the predominant factor and that the state had not met the strict scrutiny test with respect to any of these districts. Thus, the court concluded that the districts violate the Equal Protection Clause of the 14th Amendment to the U.S. Constitution, as interpreted by the Supreme Court in Shaw v. Reno, 509 U.S. 630 (1993), Miller v. Johnson, 115 S.Ct. 2475 (1995), and subsequent Supreme Court rulings construing those cases.

As noted above, a reduction in minority voting strength that is required by the United States Constitution does not violate Section 5. Indeed, we have long applied this principle in the context of voting changes made by jurisdictions in order to comply with the constitutional one-person, one-vote requirement. See Fed. Reg. 488 (Jan. 6, 1987). This same principle applies to the Equal Protection holdings of the Supreme Court since Shaw. Those holdings apply to the circumstances presented by the submission pending before us. Thus, each of the significant reductions in minority voting strength proposed by the state must be evaluated in light of the Smith decision and the particular circumstances surrounding the altered districts.

Applying these principles, we have concluded that the state has met its burden under Section 5 with respect to all but one district in the 1997 senate redistricting plan. However, with respect to District 37, we have concluded that the state has not met its burden of demonstrating that the significant reduction in black voting strength was necessary for the state to comply with the Smith court's order.

From our analysis of the geography and demographics of the area in and around the proposed District 37, it appears that there are alternative configurations that would minimize the reduction in black voting strength in District 37. Our review of the minority population concentration in this region also reveals that there were choices available to the state that would substantially address the Smith court's constitutional concerns and not significantly diminish black voting strength in neighboring senate districts.

In addition to our own analysis, we also have reviewed the alternate approach to devising districts in this area as reflected in the 1995 senate staff plan. We were not provided with sufficiently detailed data to fully analyze the senate's contentions that the staff plan does not adequately remedy the Smith court's concerns. Nevertheless, the staff plan does inform the retrogression analysis by illustrating that the inclusion of compact black population areas in neighboring Williamsburg and Dorchester Counties is one way of minimizing the diminution of black voting strength in District 37 resulting from removing population from the City of Georgetown that was in the e- district.

Further, as the state is aware, counsel for the citizen defendant-intervenors has developed and submitted an illustrative plan that includes a reasonably compact majority black District 37 that does not diminish black voting strength to the degree seen in the senate's proposed plan and does not reduce black voting strength significantly in neighboring majority black districts. That plan also would appear to substantially address the Smith court's concerns.

We have given careful consideration to the state's arguments with respect to both the 1995 staff plan and the defendant-intervenors' plan. Of course, we do not suggest here that the state must adopt either of those plans or any other particular plan. However, the illustration of the ability to create a compact district that minimizes the reduction in black voting strength precludes us from concluding that the state has met its burden of demonstrating that the significant retrogression in District 37 was necessary to address the Smith court's constitutional concerns.

In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that the state has sustained its burden of proving that as to the proposed District 37, the plan does not result in "retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise" that is not required to bring the senate districts in compliance with the Equal Protection Clause of the Fourteenth Amendment. See Beer, 425 U.S. at 141. Accordingly, on behalf of the Attorney General, I must object to the 1997 redistricting plan for the South Carolina Senate.

In addition, preclearance may not be granted if implementation of the change would clearly violate Section 2 of the Act, 42 U.S.C. 1973. 28 C.F.R. 51.55. An examination of the election data for primary and general elections from 1988 through 1996 reveals the existence of legally significant racial bloc voting patterns in the District 37 area. Moreover, the Smith court found that racially polarized voting is present in all the challenged senate districts, including the District 37 area. See Smith, 946 F. Supp. at 1202. Further, as described supra, there is a compact majority black population in this area such that an additional senate district with a black voting age population majority can be created.

These factors clearly demonstrate the existence of the preconditions for a Section 2 violation under Thornburg v. Gingles, 478 U.S. 30 (1986). Additionally, the long history of official discrimination in South Carolina affecting black citizens' right to vote is undisputed, and as the Smith court found, substantial socioeconomic disparities between black citizens and white citizens persist. See Smith, 946 F. Supp. at 1203. Further, election data indicate that voter participation levels among blacks continue to lag behind those of whites in this part of the state.

Accordingly, I must also, on behalf of the Attorney General, object to the 1997 redistricting plan for the South Carolina Senate on the ground that it represents a clear violation of Section 2 of the Voting Rights Act.

We note that under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed change has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. In addition, you may request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia is obtained, the proposed 1997 state senate redistricting plan continues to be legally unenforceable. Clark v. Roemer, 500 U.S. 646 (1991); 28 C.F.R. 51.10 and 51.45.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the state of South Carolina plans to take concerning this matter. If you have any questions, you should call Rebecca Wertz (202/514-6342), Deputy Chief of the Voting Section.

With regard to the special election schedule, we are continuing our review of this voting change and expect to make a determination on this matter by April 21, 1997.

Because the redistricting of the South Carolina Senate is at issue in Smith v. Beasley, Civil Action No. 3:95-3235-0 (D.S.C.)(three-judge court), we are providing a copy of this determination letter to the court.

Sincerely,

Isabelle Katz Pinzler
Acting Assistant Attorney General
Civil Rights Division

cc: Counsel of Record

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

May 14, 1997

The Honorable John W. Drummond
President Pro Tempore of the
South Carolina Senate
Attn: Mark Packman, Esq.
Dickstein, Shapiro, Morin, & Oshinsky
2101 L Street, N.W.
Washington, D.C. 20037-1526

Dear Mr. Drummond:

This refers to your request that the Attorney General reconsider and withdraw the April 1, 1997 objection interposed under Section 5 of the Voting Rights Act, 42 U.S.C. 1973c, to the 1997 redistricting plan for the South Carolina Senate. We received your request on April 14, 1997.

We have reconsidered our earlier determination in this matter based on the information and arguments you have advanced in support of your request, along with the other information in our files and comments received from other interested persons. The senate bases its request for reconsideration primarily on the arguments set out in the senate's Memorandum in Support of the Motion to Adopt the 1997 Proposed Plan as an Interim Plan, submitted to the court in Smith v. Beasley, 3-95-3235-0 (D.S.C.), on April 14, 1997. That Memorandum incorporates essentially three arguments: (1) the Attorney General utilized the wrong benchmark in her retrogression analysis; (2) neither the 1995 staff plan nor the ACLU's illustrative plan provides an appropriate remedy for the constitutional violation identified in Smith, and thus the Attorney General erred in using these plans as part of her analysis; and (3) it is impermissible for the Attorney General to base an objection on a clear violation of Section 2.

The April 1 objection letter explained the analysis used to evaluate possible retrogression under the 1997 senate redistricting plan. Ordinarily, a proposed redistricting plan is compared to the plan that was "in effect" at the time of the submission to determine whether the change has reduced minority voting strength in a significant way. Such a reduction is termed "retrogressive" and violates Section 5. See Beer v. United States, 425 U.S. 130, 141 (1976). In circumstances such as those presented here, where certain districts in the last plan "in effect" have been found to be the result of an unconstitutional racial gerrymander, our analysis goes a step further. We must look to determine whether the reduction in black voting strength effected by the proposed remedial plan was necessary to cure the constitutional infirmities found in the existing plan. If the diminution of black voters' electoral opportunities is necessary to satisfy the Constitution, that reduction does not violate the principles of Section 5 and would not be retrogressive. However, Section 5 prohibits the state from abridging minority voting strength more than is necessary to cure the unconstitutionality.

The senate argues that the benchmark should be the state's 1984 redistricting plan. However, to use a plan from the prior decade to gauge the degree to which black voters would be "worse off" under the 1997 plan than they are now would ignore the legitimate gains in electoral opportunity by minority voters reflected in plans implemented since that time, including the existing plan (most aspects of which suffer no constitutional defects). Such an approach would contravene the very purpose of Section 5 and would not be necessary to serve the goal of requiring states to tailor their remedial efforts to curing courts' findings of unconstitutionality. In contrast, the retrogression analysis employed by the Attorney General strikes the necessary balance between the state's obligations to follow the constitutional principles enunciated in Shaw v. Reno (and the subsequent Supreme Court rulings construing it) and the Voting Rights Act's mandate to ensure that minority voters do not suffer avoidable retrogression in their ability to participate in the political process and to elect their choices to office.

The proposed plan, as set out in Act No. R.2 (1997), would have resulted in a significant reduction in black voting strength in the two majority black senate districts that were altered. In your February 19, 1997 submission, you contended that these significant reductions were necessary to remedy the court's constitutional concerns. With regard to the reduction of black population levels in Senate District 29, the state satisfied its Section 5 burden. However, with regard to Senate District 37, we concluded that the state failed to sustain its burden of demonstrating that the 13 percentage point reduction in black

voting age population was necessary for the state to comply with the Smith court's order.

The state asserts that neither the ACLU illustrative plan nor the 1995 staff plan provides an appropriate remedy for the constitutional violation identified in Smith. As clearly stated in the April 1 objection letter, the reference to the ACLU's illustrative plan was not intended to suggest that the state must adopt that plan as a remedy. Rather, the illustrative plan served the analytical purpose of demonstrating one way to configure the districts to include a reasonably compact District 37 that appears to cure the constitutional infirmities identified by the Smith court while not effecting so significant a reduction in black voting strength in that district.

It may be true that aspects of the approach taken in this alternative plan may not satisfy all of the senate's political goals or other redistricting preferences and the state, of course, remains free to apply its legitimate criteria (e.g., the senate's stated concerns over the population deviations in the ACLU plan likely could be alleviated if it chooses not to keep as many VTD's whole). Nevertheless, the senate's criticisms of this illustrative plan do not undermine our conclusion that the senate has not carried its burden of showing that the reduction in black voting strength in District 37 was necessary to address the Smith court's order. As to the 1995 staff plan, we reiterate that it served the limited role of demonstrating that the effect of removing the City of Georgetown from District 37 (to comply with the court's order) could have been minimized by including compact black population areas in Williamsburg and Dorchester Counties in District 37.

The state also argues that the objection should be withdrawn because it is impermissible for the Attorney General to base an objection under Section 5 on a conclusion that the proposed plan represents a clear violation of Section 2. That legal question was recently resolved by the Supreme Court. In Reno v. Bossier Parish School Board, ___ U.S. ___, 1997 WL 235097 (May 12, 1997), the Court held that preclearance under Section 5 may not be denied solely on the basis that the jurisdiction's new voting "qualification, prerequisite, standard, practice, or procedure" violates Section 2 of the Voting Rights Act. In light of the Bossier Parish ruling, we no longer base the objection to the 1997 plan on the conclusion that the proposed plan constitutes a clear violation of Section 2.

In light of these considerations, I remain unable to conclude that the state has sustained its burden of proving that as to the proposed District 37 the plan does not result in "retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise" that is not required to bring the senate districts in compliance with the Equal Protection Clause of the Fourteenth Amendment. See Beer v. United States, 425 U.S. at 141. Thus, the state has not demonstrated that the proposed plan neither has a discriminatory purpose nor a discriminatory effect. See Georgia v. United States, 411 U.S. 526 (1973); Procedures for the Administration of Section 5, 28 C.F.R. 51.52. Therefore, on behalf of the Attorney General, I must decline to withdraw the objection to the 1997 redistricting plan for the South Carolina Senate.

As we previously advised, you may seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed change has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. Until such a judgment is rendered by that court, the objection by the Attorney General remains in effect and the proposed change continues to be legally unenforceable. See Lopez v. Monterey Co., California, 117 S.Ct. 340 (1996); Clark v. Roemer, 500 U.S. 646 (1991); 28 C.F.R. 51.10, 51.11, and 51.48(c) and (d).

Since the Section 5 status of the 1997 redistricting plan for the South Carolina Senate is before the court in Smith v. Beasley, C.A. No. 95-3235:0 (D.S.C.), we are providing a copy of this letter to the court and counsel of record in that case. To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the state plans to take concerning this matter.

Sincerely,

Isabelle Katz Pinzler
Acting Assistant Attorney General
Civil Rights Division

cc: The Honorable Robert F. Chapman
The Honorable Matthew J. Perry
The Honorable Joseph Anderson, Jr.

Counsel of Record

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

MAY 20 1998

John C. Henry, Esq.
The Thompson Law Firm
Post Office Box 1533
Conway, South Carolina 29528

Dear Mr. Henry:

This refers to the 1997 redistricting plan for the county council for Horry County, South Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your responses to our January 26, 1998, request for additional information on February 11, March 2, April 3, and April 9, 1998; supplemental information was received on February 20, 1998.

We have carefully considered the information you have provided, as well as Census data, and information and comments from other interested persons. Section 5 of the Voting Rights Act requires that the submitting authority demonstrate that the proposed change has neither a discriminatory purpose nor a discriminatory effect. Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5, 28 C.F.R. 51.52.

In Beer v. United States, 425 U.S. 130, 141 (1976), the Supreme Court made clear that a voting change that diminishes "the ability of minority groups to participate in the political process and to elect their choices to office" is retrogressive and should not be precleared under Section 5. The benchmark for determining whether a redistricting plan will have a retrogressive effect under Section 5 is the plan "in effect at the time of the submission," unless the existing plan is legally unenforceable under Section 5, see 28 C.F.R. 51.54(b), or has been found by a federal court to violate the constitutional principles established in Shaw v. Reno, 509 U.S. 630 (1993) and

Miller v. Johnson, 515 U.S. 900 (1995). See Abrams v. Johnson, 117 S. Ct. 1925 (1997). Under either of these circumstances, the benchmark for measuring retrogression is the last legally enforceable plan or procedure used by the jurisdiction. Id.

On October 31, 1997, the federal district court in Prince v. Horry County Council, CA No. 4:97-0273-12 (D.S.C.), based on stipulated liability by the county, found that Districts 7 and 9 of Horry County's existing redistricting plan violated the constitutional principles recognized in Shaw v. Reno, and ordered the county to adopt a plan that remedied these concerns and submit the plan for Section 5 review. Therefore, in our review of the instant submission, the county's proposed plan must be measured against the last legally enforceable redistricting plan that was in effect in Horry County, which was a plan precleared on March 8, 1982 [hereinafter "the benchmark plan"].

According to 1990 Census data, black persons represent approximately 18 percent of the county's total population and 15 percent of its voting age population. The county's 12-member council is elected from 11 single-member districts with the chairperson elected at large. At present, two of the 12 councilmembers are black and they represent the only two districts in the county with black population majorities -- Districts 7 and 9. Information provided by the county does not establish the absence of racially polarized voting in Horry County. Furthermore, we note that racially polarized voting has been found to exist recently throughout the State of South Carolina. See Smith v. Beasley, 946 F. Supp. 1174, 1202-1203 (D.S.C. 1996)(three-judge court); see also Burton v. Sheheen, 793 F. Supp. 1329, 1357-1358 (D.S.C. 1992)(three-judge court)(noting parties' stipulations for that case that "since 1984 there is evidence of racially polarized voting in South Carolina."), vacated and remanded sub nom., Campbell v. Theodore, 508 U.S. 968 (1993).

The county's benchmark plan (using 1990 Census data) includes one district, District 7, with a 54 percent black population majority, and a 50 percent black voting age population. Under the proposed plan, no district has a black voting age percentage approaching that of District 7 in the benchmark plan. Proposed District 7 has a black population of 47 percent, and a black voting age population of 43 percent. Proposed District 9 is 50 percent black in total population and 44 percent black in voting age population.

Based upon voter registration data provided by the county, black voters appear to represent approximately 44 percent of the registrants in proposed District 7 and 35 percent of the registrants in proposed District 9. These percentages are significantly lower than the black registration percentage for District 7 in the benchmark plan, which appears to be greater than 50 percent black.

We are aware that proposed District 9 has a black population percentage of 50.04, according to 1990 Census data. However, our investigation reveals that this district includes areas that have experienced significant white population growth since 1990. This information together with the county's estimates that the district is only 35 percent black in registration, indicate that the district likely is significantly less than 50 percent black in population. Thus, under the proposed plan, black registrants will not constitute a majority in any district and, in the context of racially polarized voting, their ability to elect candidates of choice to the county council will be greatly diminished.

We recognize that a reduction in minority voting strength that is required by the United States Constitution does not violate Section 5. Indeed, we have long applied this principle in the context of our review of plans adopted to comply with the constitutional one-person, one-vote requirement. See Revision of the Procedures for the Administration of Section 5, Supplementary Information, 52 Fed. Reg. 486, 488 (Jan. 6, 1987). Similarly, the circumstances presented in Horry County might well require some reduction in minority voting strength in order to both address the Prince court's constitutional concerns and correct for population inequalities in the benchmark plan, but any reduction in minority voting strength would require evaluation to determine whether the plan goes farther than is necessary to address these concerns.

Applying these principles, we have concluded that the county has not met its burden under Section 5. From our analysis of the geography and demographics of the area in and around the proposed District 7, which is located on the west side of the county in the same general area as the benchmark District 7, it appears that there are alternative redistricting configurations that are constitutional, yet would have lessened the reduction in black voting strength in District 7. Indeed, the plan first drawn by the county's demographers and thereafter considered by the county council included a district located in the western portion of the county with a black total population of 52 percent, and a black voting age population of 48 percent (numbered District 9 in that

plan). Using 1998 registration data, it appears that black voters would constitute approximately 49 percent of the registrants in that district. This alternate plan does not diminish black voting strength to the degree seen in the proposed plan and also appears to address the Prince court's concerns.

Because these alternate redistricting configurations illustrate the ability to create a reasonably compact district that reduces black voting strength to a lesser extent than the proposed plan, we cannot conclude that the reduction in the black population percentage in District 7 occasioned by the proposed plan was necessary or required in order to address the Prince court's constitutional concerns. In light of these considerations, I cannot conclude, as I must under the Voting Rights Act, that the county has sustained its burden of proving that the proposed plan does not result in "retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise" that is not required to bring the county council redistricting plan into compliance with the Equal Protection Clause of the Fourteenth Amendment. See Beer, 425 U.S. at 141. Accordingly, on behalf of the Attorney General, I must object to the 1997 redistricting plan for the Horry County council.

We note that under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed change has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. See 28 C.F.R. 51.44. In addition, you may request that the Attorney General reconsider the objection. See 28 C.F.R. 51.45. However, until the objection is withdrawn or a judgment from the District of Columbia is obtained, the proposed 1997 county council redistricting plan continues to be legally unenforceable. Clark v. Roemer, 500 U.S. 646 (1991); 28 C.F.R. 51.10.

It is our understanding that the districts currently used to elect members of the Horry County Board of Education follow the boundary lines used to elect county councilmembers. You have informed us that Horry County does not have the authority to submit board of education redistricting changes for Section 5 review. Therefore, our review of the instant submission was limited to a review of the proposed redistricting plan for county council districts. Review under Section 5 is required for any use of the plan in conjunction with the election of county school board members.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action Horry County plans to take concerning this matter. If you have any questions, you should call Cal Gonzales (202-514-6450), an attorney in the Voting Section.

Because the redistricting of the Horry County council is at issue in Prince v. Horry County Council, CA No. 4:97-0273-12 (D.S.C.), we are providing a copy of this determination letter to the court and counsel of record.

Sincerely,

Bill Lann Lee
Acting Assistant Attorney General
Civil Rights Division

cc: The Honorable C. Weston Houck
Chief United States District Judge

William H. Freeman, Esq.
John Roy Harper, II, Esq.
John Singleton, Esq.

U. S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

October 12, 2001

Francis I. Cantwell, Esq.
Regan, Cantwell and Stent
P.O. Box 1001
Charleston, South Carolina 29402

Dear Ms. Cantwell:

This refers to the 2001 redistricting plan for the City of Charleston in Berkeley and Charleston Counties, South Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your most recent responses to our August 3, 2001, request for additional information on August 7, 8, 13, and 15, 2001.

We have carefully considered the information you have provided, as well as information in our files, Census data, and information and comments from other interested persons. According to the 2000 Census, black persons represent 34.0 percent of the city's total population and 30.1 percent of its voting age population.

The Charleston City Council consists of a mayor elected at large and 12 councilmembers elected from single-member districts. According to the 2000 Census, six districts are majority black in total population, ranging from 56.0 to 70.6 percent. Five of these districts are also majority black in voting age population. The one exception is District 2, which has a 48.1 percent black voting age population.

Upon its implementation, the proposed redistricting plan would decrease the number of majority-minority districts to five, a result which our analysis of demographic changes in Charleston indicates is unavoidable and necessary to comply with the constitutional requirement of one person-one vote.

However, it appears that no constitutional or legal imperative required that the area comprising existing District 2 be combined with District 4 in a revised District 4. Our concerns regarding the proposed combination of these districts stems from the rapid population growth projected for Daniel Island, which is located in proposed District 4. According to information the city has provided, significant residential development in this area is already under way. The city estimates that the total number of building permits over the next five years in the Berkeley County portion of the city is 1,131. Using the 2.75 persons per household figure recommended by the city to compute the population projections for the Berkeley County portion, the future additional total population would be 3,110. As of July 1, 2001, the Berkeley County Voter Registrar recorded the City of Charleston portion of Cainhoy Precinct as having a total of 567 registered voters, of whom only 8 (1.4%) are black.

Further, as you have conceded, it is likely that the dwellings on Daniel Island (primarily townhouses and single-family homes) will have mostly white residents in the future considering that the lowest priced townhouses are expected to cost approximately $160,000.

The city further estimates that 206 housing units in the Cainhoy area may cost less than $100,000, and possibly 40 percent of an anticipated 300-unit apartment complex would have reduced rents and be affordable for minorities. Our information is that while not all the prices of homes in the Cainhoy area (northeast of Daniel Island, and included in proposed District 4) have been finalized many of the designated low-income housing units in Cainhoy will not in fact be affordable for minorities in the area.

Further, while proposed District 4 may continue to be a district in which minority voters have an equal opportunity to elect a candidate of their choice in the next council election, "Section 5 looks not only to the present effects of changes but to their future effects as well." Reno v. Bossier Parish School Board, 528 U.S. 320, 340 (2000), citing City of Pleasant Grove v. United States, 479 U.S. 462, 471 (1987). The available information on demographic changes and the continued presence of racial bloc voting in city elections, indicates that in a matter of only a few years, proposed District 4 will no longer be a district in which minority voters will be able to elect a candidate of their choice.

Future retrogression in minority voting strength in District 4 is neither required nor inevitable. Our analysis indicates that future retrogression in District 4 could be minimized by adjusting the district's boundaries. One such slightly altered plan discussed in our August 13, 2001, meeting in Washington would place Daniel Island in a majority white district and, in exchange, a residential area that is already well established could be placed in District 4. Such a plan could maintain minority voting strength in District 4 at its current level for a significant period of time. The city officials stated that they considered such a plan but did not choose it because it conflicts with some of the city's redistricting goals, such as "neighborhood cohesiveness and maintaining constituent consistency." These reasons for not pursuing such an alternative plan are not persuasive since the existing plan already separates neighborhoods (downtown and on Daniel Island) and divides the portion of the city in Berkeley County between three city council districts that are each mainly on a separate land body.

We believe that a slightly altered plan would not be in conflict with the city's redistricting goals as they have been presented to us in your June 1, 2001, submission letter or as they are reflected in the city's existing redistricting plan. However, if the city believes that such an altered plan conflicts with the city's redistricting goals, we note that "compliance with Section 5 of the Voting Rights Act may require the jurisdiction to depart from strict adherence to certain of its redistricting criteria. For example, criteria which require the jurisdiction to make the least change to existing district boundaries, follow county, city or precinct boundaries, protect incumbents, preserve partisan balance, or in some cases require a certain level of compactness of district boundaries may need to give way to some degree to avoid retrogression." See Guidance Concerning Redistricting and Retrogression Under Section 5 of the Voting Rights Act, 66 Fed. Reg. 5412 (Jan. 18, 2001) (copy enclosed).

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.52). In light of the considerations discussed above, I cannot conclude that your burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the 2001 redistricting plan.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.52). In light of the considerations discussed above, I cannot conclude that your burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the 2001 redistricting plan.

We note that under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed change neither has the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. See 28 C.F.R. 51.44. In addition, you may request that the Attorney General reconsider the objection. See 28 C.F.R. 51.45. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the submitted plan continues to be legally unenforceable. Clark v. Roemer, 500 U.S. 646 (1991); 28 C.F.R. 51.10.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the City of Charleston plans to take concerning this matter. If you have any questions, you should call George Schneider (202-307-3153), Special Section 5 Counsel in the Voting Section.

Sincerely,

R. Alex Acosta
Acting Assistant Attorney General
Civil Rights Division

U. S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

NOV 2 2001

John B. Duggan, Esq.
Love, Thornton, Arnold & Thomason
P.O. Box 449
Greer, South Carolina 29652-0449

Dear Mr. Duggan:

This refers to the 2001 redistricting plan for the City of Greer in Greenville and Spartanburg Counties, South Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your responses to our August 20, 2001, request for additional information through October 17, 2001. We have considered carefully the information you have provided, as well as census data, and comments and information from other interested parties. Based on the information available to us, I am compelled to object to the submitted redistricting plan on behalf of the Attorney General.

According to the 2000 Census, the City of Greer has a population of 16,843, of whom 19.7 percent are black and 8.2 percent are Hispanic. The demographic data indicates that the city's black population percentage has declined since the previous decennial census. As a result, we understand that it is no longer feasible to devise a redistricting plan, which complies with one-person, one-vote standards, and which contains two districts in which minority voters can elect candidates of choice. However, as set forth below, the sole remaining majority minority district in the proposed plan will not continue to allow minority voters to elect candidates of their choice. As a result, the plan is retrogressive. See, Guidance Concerning Redistricting and Retrogression under Section 5 of the Voting Rights Act, 42 U.S.C. 1973c, 66 Fed. Reg. 5411. 5413 (Jan. 18, 2001).

Proposed District 2, the majority minority district in the proposed plan, includes much of the area previously included in District 1. Thus, the voting patterns of former District 1 are particularly relevant to our determination of future voting behavior in District 2, which the city presents as the district in which minority voters will retain the ability to elect candidates of their choice. Accordingly, we have examined elections for both municipal elections in Greer as well as other elections in which voters in Districts 1 and 2 participated. Our analysis indicates that voting in these elections in those areas are marked by a pattern of racial polarization.

An analysis of the 1995 and 1999 election returns for District 1 shows a significant correlation between the demographics of the area, the race of the voters, and the race of the candidate. In the 1995 election, Perry Dennis received 98.8 percent of his votes from Spartanburg County, which is comprised of 95.6 percent of the total registered black voters of District 1. Conversely, Mr. Dennis received 1.16 percent of his votes from Greenville County where black voters comprised 4.37 percent of the total registered voters in District 1. The 1999 election data also indicate strong racial bloc voting tendencies. Mr. Dennis received 91.6 percent of his votes from the portion of District 1 in Spartanburg County, which had 98.4 percent of the district's total black registered voters. Conversely, 8.3 percent of his total votes were from the Greenville portion of the district which had 1.6 percent of the district's total black registered voters.

We also note that in the 1999 election, the candidate supported by the minority community won election by only 14 out of 158 votes cast. At that time, the district was approximately 59 percent black. Further, our analysis of recent election returns demonstrates a significant disparity in the turnout rates of white and black voters. For example, our analysis of a 1994 election showed that white voters turned out at a rate of 63 percent, whereas black voters turned out at a rate of 30 percent. Given this pattern of electoral behavior, black voters will lose the opportunity to elect their candidate of choice in District 2. Accordingly, we have concluded that the city has not carried its burden of establishing that its redistricting plan would not lead to retrogression in the ability of minority to exercise their electoral franchise.

In addition, the city has failed to meet its burden of establishing an absence of a purpose to retrogress minority voting strength in the adoption of the plan. It appears that the city council was aware that the minority elected officials and community were deeply concerned that at least one remaining district be maintained in which minority voters would have a meaningful opportunity to elect their candidates of choice. Yet, the city's actions do not seem to reflect that it was trying to be responsive to these concerns.

During the redistricting process the city appears to have been more responsive to the concerns of white individuals than to the concerns expressed by minorities. For example, in the first proposed plan, created by the state redistricting office, a white incumbent was drawn out of his district, and the area of Burgiss Hills, a virtually all-white area, was drawn into the proposed minority District 1. When white citizens raised concerns about these changes the city took immediate action to address those concerns, and the resulting plan was the one ultimately adopted. Yet the city quickly rejected alternative redistricting plans supported by the minority community.

The city's asserted reasons for dismissing the minority-preferred plans, which included a stronger minority district, appear inconsistent with the standards applied to the plan eventually adopted by the city. First, the city contends that its proposed plan was necessary to align certain communities of interest. Yet, some actions taken in furtherance of that goal appear instead to split communities. For example, the city claims it was important to pair Greer and Victor Mills, two non-adjacent areas that previously had never been in the same district. In the course of making this change the city split Victor Mills into proposed Districts 2 and 3, thereby disrupting a recognized and existing community of interest.

Similarly, claims that the minority preferred plan would violate the principles of the Shaw v. Reno line of cases were exaggerated. The minority district set forth in the plan preferred by the minority community is in fact more compact and more viable than the one in the submitted plan.

Finally, the alternative plans rejected by the city demonstrate that it is possible to draw a plan that meets the city's legitimate redistricting criteria while including a district in which minority voters will continue to have the opportunity to elect their candidates of choice. Given the concerns discussed above about the viability of District 2 under the proposed plan, the presence of these alternative plans is a vital factor in our decision.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. Georgia v. United States, 411 U.S. 526 (1973); Reno v. Bossier Parish School Board, 528 U.S. 320 (2000); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.52). In light of the considerations discussed above, I cannot conclude that your burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the submitted redistricting plan.

We note that under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed changes neither have the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. See 28 C.F.R. 51.44. In addition, you may request that the Attorney General reconsider the objection. See 28 C.F.R. 51.45. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the changes continue to be legally unenforceable. Clark v. Roemer, 500 U.S. 646 (1991); 28 C.F.R. 51.10.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the City of Greer plans to take concerning this matter. If you have any questions, you should call Ms. Judybeth Greene (202-616-2350), an attorney in the Voting Section. Refer to File No. 2001-1777 in any response to this letter so that your correspondence will be channeled properly.

Sincerely,

Ralph F. Boyd, Jr.
Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

June 27, 2002

Mr. Charles T. Edens
Chairperson, County Council
13 East Canal Street
Sumter, South Carolina 29150

Dear Mr. Edens:

This refers to the 2001 redistricting plan for Sumter County, South Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your responses to our March 12, 2002, request for additional information on April 29, 2002.

We have considered carefully the information you have provided, as well as census data, comments and information from other interested parties, and other information, including the county's previous submissions. Based on our analysis of the information available to us, I am compelled to object to the submitted redistricting plan on behalf of the Attorney General.

The 2000 Census indicates that Sumter County has a population of 104,646, of whom 46.6 percent are black. The county council consists of seven members elected from single-member districts to serve four-year, staggered terms.

Under 2000 Census data, four of the seven districts in the current, or benchmark, plan have both total and voting-age populations that are majority black. In three of these four, black voters will continue to have the ability to elect candidates of their choice. Our analysis, however, shows that this is not true for the fourth district, District 7. Under the benchmark plan, black voters in that district have the ability to elect their candidates of choice, and they will not have that same ability under the proposed plan, which decreases the black total population by 8.7 percentage points to 54.2 percent and the black voting-age population by 9.6 percentage points to 49.3 percent.

Our analysis shows that elections within District 7 are marked by a pattern of racially polarized voting. Moreover, we analyzed several county-wide elections to determine whether black voters would have the present ability to elect candidate of choice under the benchmark plan District 7. We determined that, while under the benchmark plan black voters did indeed have the ability to elect a candidate of choice, under the proposed plan they would not; analysis of two prior elections demonstrates that under District 7 as configured under the proposed plan, the black candidate of choice would lose, or at best win by an extremely narrow margin. Accordingly, the implementation of the proposed plan will result in a retrogression in the minority voters effective exercise of their electoral franchise.

This retrogression was avoidable. Our analysis of the information submitted indicates that the reduction of the black population percentage in District 7 was not required to comply with the county's stated redistricting criteria. First, the district had the lowest deviation of all districts and did not require any modification. Second, the county's own consultant presented an alternative plan, Version 1, which satisfied the county's initial redistricting criteria and maintained the demographics of the benchmark district.

A proposed change has a discriminatory effect when it will "lead to a retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise." Beer v. United States, 425 U.S. 125, 141 (1976). If the proposed plan materially reduces the ability of minority voters to elect candidates of their choice to a level less than what they enjoyed under the benchmark plan, preclearance must be denied. State of Georgia v. Ashcroft, 195 F.Supp 2d. 25 (D.D.C. 2002). In Texas v. United States, the court held that "preclearance must be denied under the 'effects' prong of Section 5 if a new system places minority voters in a weaker position than the existing system." 866 F.Supp. 20, 27 (D.D.C. 1994).

With respect to the county's ability to demonstrate that the plan was adopted without a prohibited purpose, as noted above the retrogressive effect was easily avoidable. The county was not compelled to redraw the district, and even if it wished to do so, the county was presented with an alternative that met all of its legitimate criteria while maintaining the minority community's electoral ability in District 7, an alternative the county rejected. Moreover, it appears that during the redistricting process the county council explicitly decided to pursue a "3-3-1" plan, i.e., to eliminate one of the four existing majority

minority districts in favor of a "neutral district," more similar to the county's redistricting configuration after implementation of the 1992 redistricting plan. In these circumstances, we cannot conclude that the county will be able to sustain its burden, as it must, that the action in question was not motivated by a discriminatory intent to retrogress.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. Georgia v. United States, 411 U.S. 526 (1973); Reno v. Bossier Parish School Board, 528 U.S. 320 (2000); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.52). In light of the considerations discussed above, I cannot conclude that your burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the submitted redistricting plan.

We note that under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed changes neither have the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. See 28 C.F.R. 51.44. In addition, you may request that the Attorney General reconsider the objection. See 28 C.F.R. 51.45. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the changes continue to be legally unenforceable. Clark v. Roemer, 500 U.S. 646 (1991); 28 C.F.R. 51.10.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action Sumter County plans to take concerning this matter. If you have any questions, you should call Ms. Judith Reed (202-305-0164), an attorney in the Voting Section. Refer to File No. 2001-3865 in any response to this letter so that your correspondence will be channeled properly.

Sincerely,

Ralph F. Boyd, Jr.
Assistant Attorney General

U. S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

SEP 3 2002

C. Havird Jones, Jr., Esquire
Senior Assistant Attorney General
P.O. Box 11549
Columbia, South Carolina 29211-1549

Dear Mr. Jones:

This refers to Act R.192 (2002), which provides the redistricting plan, the method of staggering terms, and the implementation schedule for the Union County School District in Union County, South Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your responses to our June 17, 2002, request for additional information through August 20, 2002.

We have carefully considered the information you have provided, as well as information in our files, census data, and information and comments from other interested persons. In light of the considerations discussed below, I cannot conclude that your burden under Section 5 of the Voting Rights Act has been sustained in this instance. Therefore, on behalf of the Attorney General, I am compelled to object to the 2002 redistricting plan.

The 2000 Census indicates that Union County School District has a population of 29,881, of whom 9,291 (31.1%) are black persons. The board of trustees consists of nine members elected from single-member districts to four-year staggered terms. Elections are nonpartisan, plurality-win contests conducted at the same time as the general election in even-numbered years. Under 2000 Census data, two of the nine districts in the benchmark plan have both total and voting-age populations that are majority black, Districts 1 and 7. Available information is that prior to the adoption of the benchmark plan in 1989, no black candidates had been elected to the board of trustees. Since the 1989 plan was implemented in 1990, our analysis indicates that Districts 1 and 7 have often elected candidates of choice for black voters to the board of trustees. The proposed plan would drop District 1 by roughly four points in the black share of the total and voting age population, and would drop

District 7 by roughly seven points in the black share of the total and voting age population.

Our review of the benchmark and proposed plans, as well as alternative plans introduced in the legislature, suggests that the magnitude of the reductions in black voting age population percentages in Districts 1 and 7 in the proposed plan was neither inevitable nor required by any constitutional or legal imperative; alternative redistricting approaches available to the State avoided significant reductions in black voting strength while adhering substantially to the State's redistricting goals as presented in your submission. The State's failure to account fully for not considering these alternatives implies an intent to retrogress. Further, should the State believe that such an altered plan conflicts with its redistricting goals, we note that "compliance with Section 5 of the Voting Rights Act may require the jurisdiction to depart from strict adherence to certain of its redistricting criteria." Guidance Concerning Redistricting and Retrogression Under Section 5 of the Voting Rights Act, 66 Fed. Reg. 5412 (Jan. 18, 2001).

Also revealing is the fact that, in contrast to the process which led to the 1989 benchmark plan, the proposed plan here was developed without any formal public hearings in the county, and without any opportunity for black members of the local board of trustees and the local black community to voice what we understand to be considerable concerns regarding the plan, resulting in an atmosphere of secrecy. Moreover, the State failed fully to comply with our repeated requests for further information concerning electoral contests between black and white candidates, and for certain information omitted from the original submission, including the transcript of the one legislative debate in which the potentially retrogressive effect of the submitted plan was discussed.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. Georgia v. United States, 411 U.S. 526 (1973); Beer v. United States, 425 U.S. 125 (1976); Reno v. Bossier Parish School Board, 528 U.S. 320 (2000); see also Procedures for the Administration of Section 5 (28 C.F.R. 51.52). Analysis of the question of whether the proposed plan is motivated by an intent to retrogress is guided by the factors set forth in Village of Arlington Heights v. Metropolitan Housing Development Corp., 429 U.S. 252 (1977).

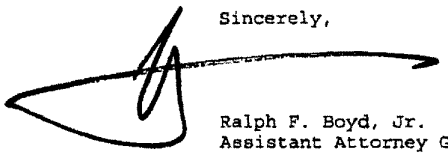
In light of the considerations discussed above, I cannot conclude that the State has sustained its burden that the proposed plan was not motivated by a discriminatory intent to cause a retrogression in minority voters' effective exercise of the electoral franchise. Therefore, on behalf of the Attorney General, I must object to the submitted redistricting plan for Union County School District.

Under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed changes neither have the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. See 28 C.F.R. 51.44. In addition, you may request that the Attorney General reconsider the objection. See 28 C.F.R. 51.45. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the changes continue to be legally unenforceable. Clark v. Roemer, 500 U.S. 646 (1991); 28 C.F.R. 51.10.

Because the change in the method of staggering terms and the implementation schedule are dependent upon the objected-to redistricting plan, it would be inappropriate for the Attorney General to make a preclearance determination on them. See 28 C.F.R. 51.22.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the State of South Carolina plans to take concerning the redistricting for the Union County School District. If you have any questions, you should call Mr. Chris Herren (202-514-1416), an attorney in the Voting Section. Refer to File No. 2002-2379 in any response to this letter so that your correspondence will be channeled properly.

Sincerely,



Ralph F. Boyd, Jr.
Assistant Attorney General

U. S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

December 9, 2002

Mr. C. Samuel Bennett II
City Manager
P.O. Drawer 748
Clinton, South Carolina 29325

Dear Mr. Bennett:

This refers to four annexations (adopted on September 20, 1993, June 5 and August 7, 1995, and December 3, 2001), and their designation to Ward 1 of the City of Clinton in Laurens County, South Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your responses to our July 29, 2002, request for additional information through October 31, 2002. We have carefully considered the information you have provided, as well as census data, comments and information from other interested parties, and other information, including the city's previous submissions.

The Attorney General does not interpose any objection to the annexations themselves; however, we note that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the changes. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41). In addition, as authorized by Section 5, we reserve the right to reexamine this submission if additional information that would otherwise require an objection to these changes comes to our attention during the remainder of the sixty-day review period. See 28 C.F.R. 51.41 and 51.43.

As discussed further below, however, I cannot conclude that the city's burden under Section 5 has been sustained with respect to the designation of the annexations to Ward 1 of the city. Therefore, on behalf of the Attorney General, I must object to the designation of the annexations.

Under Section 5, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. Georgia v. United States,

411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 of the Voting Rights Act, 28 C.F.R. 51.52.

According to the 2000 Census, the City of Clinton had a total population of 8,091, of whom 3,074 (38.0%) are black persons. We understand the city has challenged the official counts for the 2000 Census, including those for the Lydia Mills annexation that indicate 584 persons, of whom 144 (24.7%) are black, reside in that area. Rather, the city contends that the area contains approximately 700 persons, of whom 30 percent are black. However, the difference in the statistical effect of the annexations caused by the use of one set of data or the other is relatively negligible. Using census data, the annexations result in a drop in the city-wide black population percentage to 37.1 percent. Using the city's estimates, the drop is slightly less, down to 37.4 percent. The slight difference caused by the use of one set of data or the other is also true with respect to Ward 1. Using the census data, the minority population percentage decreases 9.3 percentage points from 59.3 percent to 50.0 percent. Using the city's estimate, it decreases 9.0 percentage points from 59.3 percent to 50.3 percent. Moreover, regardless of which data are used, the result of the proposed designation of the annexations to Ward 1 results in lowering the black voting age population in the ward to less than 50 percent.

The city is governed by a six-member council and a mayor, who votes on all matters brought before the council. The councilmembers are elected from wards to serve four-year, staggered terms, while the mayor is elected at large. Our analysis of local election returns, including county and municipal elections conducted between 1992 and 2000, confirms the presence of racial bloc voting in the City of Clinton, such that there are three wards (Wards 1, 2, and 3) in which black residents currently have the ability to elect a candidate of choice.

The effect of the designation of the annexations to Ward 1 significantly reduces the level of black voting strength in that district, and according to our election analysis, eliminates the ability that black voters currently have to elect their candidate of choice in the district. Concomitantly, the elimination of Ward 1 as a district in which black voters can elect a candidate of choice reduces the level of minority voting strength in the expanded city from three out of seven (42.9 percent) to two out of seven (28.6 percent), while their relative share of the city-wide electorate drops no more than a percentage point to not less than 37 percent.

Before we reached our final determination in this matter, we sought to ascertain whether the elimination of the district as one in which black voters could elect a candidate of choice, and the resulting inability of the electoral system in the expanded city boundaries to reflect minority voting strength, was unavoidable. As part of that analysis, we prepared an illustrative limited redistricting plan that affects only Wards 1 and 2. Our conclusion is that the failure to provide a fair recognition of minority voting strength in the expanded city is avoidable, through either a city-wide or a limited redistricting. We recognize that the city is aware that such redistricting is feasible, and has indicated it expects to redistrict in this manner in the future, but has chosen not to do so at this time.

Where annexations significantly decrease minority voting strength, the reasons for the annexations must be objectively verifiable and legitimate, and the post-annexation election system must fairly reflect the voting strength of the minority community in the expanded electorate. City of Richmond v. United States, 422 U.S. 358 at 371-773 (1975). See also, City of Pleasant Grove v. United States, 479 U.S. 462 (1987); City of Port Arthur v. United States, 459 U.S. 159 (1982).

Here, the reasons for the annexations themselves are objectively verifiable and appear to be legitimate. However, the designation of the annexations to Ward 1 is likely to result in the elimination of representation for a minority community which the submitted data suggest comprise 37 percent of the expanded city, an elimination that was avoidable. Thus, the city has not carried its burden of showing that the post-annexation system will fairly reflect the post-annexation strength of the minority community.

We recognize that there may be some practical reasons for the city wanting to defer its post-2000 redistricting until after its dispute with the Census Bureau concerning the 2000 Census counts is resolved. We believe, and have so indicated to city officials, that under these circumstances, it may be appropriate for the city to withdraw the instant submission until such time as it can devise and present for review a complete redistricting plan with "final" census numbers. Similarly, we have also indicated that a limited redistricting of only Wards 1 and 2, in which the Lydia Mills area is divided between those two wards would allow the city to meet its burden in this instance. However, the city has chosen to continue to seek Section 5 review at this time.

This course of action also raises a concern that, by obtaining preclearance of the designation of these annexations to Ward 1 at this time, the city establishes a benchmark plan of only two viable districts for minority voters against which any future redistricting plan would be measured. Although the city asserts that the annexations will not affect its goal of maintaining three districts with majority black populations when it does decide to redistrict, the city, under a non-retrogression standard, is free to devise a plan that does nothing more than replicate the plan that would be in effect following the annexations: three districts with a majority black total population, but only two in which black voters can elect a candidate of choice.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.52). In light of the considerations discussed above, I cannot conclude that your burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the designation of the annexations to Ward 1.

We note that under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed changes have neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. See 28 C.F.R. 51.44. In addition, you may request that the Attorney General reconsider the objection. See 28 C.F.R. 51.45. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the designation of the annexations adopted on September 20, 1993, June 5 and August 7, 1995, and December 3, 2001, to Council Ward 1 continue to be legally unenforceable insofar as they affect voting. Clark v. Roemer, 500 U.S. 646 (1991); 28 C.F.R. 51.10. Therefore, while residents of the annexed areas may vote for the at-large mayoral position when the election is rescheduled, they may not vote in a city council race until such time as the annexations have been redesignated and the designations precleared under Section 5.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the City of Clinton plans to take concerning this matter. If you have any questions, you should call Mr. Robert P. Lowell (202-514-3539), an attorney

in the Voting Section. Refer to File Nos. 2001-1512 and 2002-2706 in any response to this letter so that your correspondence will be channeled properly.

Sincerely,

Ralph F. Boyd, Jr.
Assistant Attorney General

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

JUN 16 2003

C. Havird Jones, Jr., Esq.
Senior Assistant Attorney General
P.O. Box 11549
Columbia, South Carolina 29211-1549

Keith R. Powell, Esq.
Kenneth L. Childs, Esq.
Childs & Halligan
P.O. Box 11367
Columbia, South Carolina 29211-1549

Dear Messrs. Jones, Powell, and Childs:

This refers to Act No. 416 (2002), which decreases the number of school board members from nine to seven, adopts a districting plan and an implementation schedule, raises the candidate filing fee to $200, authorizes the school board to further raise such fees, and the amended implementation schedule for the Cherokee County School District No. 1 in Cherokee County, South Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your responses to our August 19, 2002, request for additional information through May 30, 2003.

The Attorney General does not interpose any objection to the change in candidate qualifying procedures, an increase in the present qualifying fee to $200.00, and the ability of the school board to increase such fees in the future. However, we note that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the changes. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41). With regard to the board's ability to increase the qualifying fee, Section 5 preclearance is required for any future increase in filing fees.

With regard to the decrease in the number of school board members from nine to seven, we have carefully considered the information you have provided, as well as information from our files, census data, and information and comments from other persons. In light of the considerations discussed below, I cannot conclude that your burden under Section 5 has been sustained in this instance. Therefore, on behalf of the Attorney General, I am compelled to object to the reduction in the size of the school board.

According to the 2000 Census, the school district has a population of 50,728 of whom 10,726 (21.1%) are black. The school board currently consists of nine members, elected in nonpartisan elections from single-member districts to serve four-year, staggered terms. Under 2000 Census data, Districts 2 and 8 in the benchmark plan have black total population percentages of 69.5 and 63.5, respectively.

Under the proposed changes, the size of the board is reduced to seven with black persons constituting a majority of the total population in only one of the seven districts. That district, District 1, has a black total population percentage of 60.6 percent and a black voting age population of 55.5 percent. The plan also contains a district with a significant minority population, District 4, which has a 41.3 percent black total population and a 36.5 percent black voting age population.

A proposed change has a discriminatory effect when it will "lead to a retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise." Beer v. United States, 425 U.S. 125, 141 (1976). If the proposed plan materially reduces the ability of minority voters to elect candidates of their choice to a level less than what they enjoyed under the benchmark plan, preclearance must be denied. State of Georgia v. Ashcroft, 195 F.Supp.2d 25 (D.D.C 2002) probable juris. noted, 123 S.Ct 964 (2003). In Texas v. United States, the court held that "preclearance must be denied under the 'effects' prong of Section 5 if a new system places minority voters in a weaker position than the existing system." 866 F.Supp. 20, 27 (D.D.C. 1994).

Our review of electoral behavior indicates that the benchmark plan has consistently provided black voters with the ability to elect candidates of choice in two of the nine districts.

The proposed plan contains only one majority black district, District 1. With a total black population percentage of 60.6, our examination of voting patterns leads us to conclude that black voters will retain the ability to elect candidates of choice. This conclusion is unchanged even considering the pairing of a white and a black incumbent.

However, we can not reach a similar conclusion with regard to the electoral ability of black voters in District 4 of the proposed plan. In your submission, you suggest that this district affords the minority community the potential to elect a candidate of choice because it provides black-preferred candidates support from a "viable cross-over phenomenon." The school board points to the results of the 2002 general elections for Cherokee County Clerk of Court and State Attorney General; both of which featured an interracial contest.

We have also examined the results of recent school board elections. Our regression analysis indicates that, generally, the level of black voter cohesion is lower for school board elections than it is for partisan elections. Similarly, the level of cross-over voting by white residents in Cherokee County is higher in the partisan elections. Since the black voting age population in the proposed district would be only 36.5 percent black, proposed District 4 would not provide black voters with the ability to elect a candidate of choice.

Of equal significance to our conclusion that black voters will not have the ability to elect a candidate of choice in District 4 is the consistent emphasis by the state and school board officials on the ability of the present black incumbent to get re-elected in that district, rather than the ability of the black community to elect a candidate of choice. Our analysis suggests that it is not clear that someone other than the present incumbent would benefit from the "cross-over phenomenon" that has been ascribed to his past candidacies.

Since minority voters would not retain the ability to elect a candidate of choice in District 4, they will only be able to elect a lower proportion of members to the school board. Currently, they are able to elect two of the nine school board members; under the proposed seven-member plan, that ability is reduced to one out of seven. As such, the proposed election plan has a retrogressive effect.

Further, it appears that there is no configuration of seven districts that will not have a retrogressive effect. In contrast, it is possible to devise such a plan with nine

districts, the size of the present board. In fact, the NAACP presented just such a plan to Rep. Phillips, as chair of the Cherokee County legislative delegation, at the May 2002 school board meeting. This nine-member plan conformed to the then-pending legislation that retained the number of officials at nine, the same number supported by a majority of the school board members. Here, the inability to devise any seven-member plan that is not retrogressive means that it is the voluntary change from nine to seven districts that the state has failed to establish will not have the prohibited effect. Beer v. United States, 425 U.S. at 141; Guidance Concerning Redistricting and Retrogression under Section 5 of the Voting Rights Act, 66 Fed. Reg. 5412 (January 18, 2001).

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change does not have a discriminatory effect. Georgia v. United States, 411 U.S. 526 (1973); Reno v. Bossier Parish School Board, 528 U.S. 320 (2000); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.52). Based on the evidence detailed above, I cannot conclude that your burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the reduction in the size of the school board.

Because the adoption of the districting plan and the change in the initial and amended implementation schedules are dependent upon the objected-to reduction in the number of school board members, it would be inappropriate for the Attorney General to make a preclearance determination on these related changes. See 28 C.F.R. 51.22.

We note that under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed changes neither have the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. See 28 C.F.R. 51.44. In addition, you may request that the Attorney General reconsider the objection. See 28 C.F.R. 51.45. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the changes continue to be legally unenforceable. Clark v. Roemer, 500 U.S. 646 (1991); 28 C.F.R. 51.10.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the State of South Carolina plans to take concerning the reduction in the size of the school board for the Cherokee County School District.

If you have any questions, you should call Ms. Judybeth Greene (202-616-2350), an attorney in the Voting Section. Refer to File No. 2002-3457 in any response to this letter so that your correspondence will be channeled properly.

Sincerely,

Ralph F. Boyd, Jr.
Assistant Attorney General

DSD:JMS:JWC:GWJ:flh:rm
D.J. 130-69-103
D.J. 166-012-3
A3204

OCT 26 1978

Mr. Tom Tobin
States Attorney's Office
State of South Dakota
Tripp County Courthouse
Winner, South Dakota 57580

Dear Mr. Tobin:

I am writing in reference to the April 18, 1978 redistricting of commissioner precincts in Tripp and Todd Counties, South Dakota, which you submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, as amended. Your submission was received on September 14, 1978.

We have analyzed the information contained in your submission, data obtained from the Bureau of the Census as well as information and comments of other interested parties. At the outset, we note that the submitted reapportionment plan is based upon voter registration statistics instead of population statistics. While we recognize that the Supreme Court has ruled that the use of voter registration statistics in such a reapportionment is not per se unconstitutional, it has also been held that use of this statistical base can constitute a violation of the equal protection clause unless it appears that the distribution of registered voters approximates distribution of state citizens or another permissible population base. Burns v. Richardson, 384 U.S. 73, 95 (1966).

Our analysis, on the basis of Census data available to us, does not reveal that the distribution of registered voters in the plan under submission satisfies this requirement. Using 1975 Census population estimates we computed the total population within each district

created by the plan. Our analysis indicates that there is a total deviation in population distribution of approximately 65 percent among the three districts. Moreover, the one district which is predominantly Indian in population (district 3) is substantially underrepresented whereas the two predominantly white districts are both significantly overrepresented. In addition, our review of the Board of County Commissioners' minutes you included with your submission does not reflect the presence of any of the factors which made use of registration statistics acceptable in the Burns case cited above.

Under these circumstances, therefore, we are unable to conclude that the plan under submission does not have the purpose or effect of abridging the right to vote on account of race. Accordingly, on behalf of the Attorney General I must interpose an objection to the implementation of the redistricting of commissioner precincts in Tripp and Todd Counties submitted by your letter of September 11, 1978.

Of course, under the Procedures for the Administration of Section 5 of the Voting Rights Act (42 C.F.R. 51.21(b) and (c) 51.23, and 51.24) you may request the Attorney General to reconsider this objection. In addition, Section 5 permits you to seek a declaratory judgment from the United States District Court for the District of Columbia that this change does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race, color or membership in a language minority group. However, until the objection is withdrawn or such a judgment is rendered by that Court, the legal effect of the objection by the Attorney General is to render the redistricting change unenforceable.

I would appreciate it if you would inform me of what course of action you intend to follow as soon as possible and an attorney from this Division will be in touch with you in that regard very shortly.

Sincerely,

Drew S. Days III
Assistant Attorney General
Civil Rights Division

D.J. 166-012-3
A3204

OCT 25 1978

Mr. Tom Tobin
States Attorney's Office
State of South Dakota
Tripp County Courthouse
Winner, South Dakota 57580

Dear Mr. Tobin:

I am writing in reference to the April 18, 1978 redistricting of commissioner precincts in Tripp and Todd Counties, South Dakota, which you submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, as amended. Your submission was received on September 14, 1978.

We have analyzed the information contained in your submission, data obtained from the Bureau of the Census as well as information and comments of other interested parties. At the outset, we note that the submitted reapportionment plan is based upon voter registration statistics instead of population statistics. While we recognize that the Supreme Court has ruled that the use of voter registration statistics in such a reapportionment is not per se unconstitutional, it has also been held that use of this statistical base can constitute a violation of the equal protection clause unless "it appears that the distribution of registered voters approximates distribution of state citizens or another permissible population base." Burns v. Richardson, 384 U.S. 73, 95 (1966).

Our analysis, on the basis of Census data available to us, does not reveal that the distribution of registered voters in the plan under submission satisfies this requirement. Using 1975 Census population estimates we computed the total population within each district

created by the plan. Our analysis indicates that there is a total deviation in population distribution of approximately 65 percent among the three districts. Moreover, the one district which is predominantly Indian in population (district 3) is substantially underrepresented whereas the two predominantly white districts are both significantly overrepresented. In addition, our review of the Board of County Commissioners' minutes you included with your submission does not reflect the presence of any of the factors which made use of registration statistics acceptable in the Burns case cited above.

Under these circumstances, therefore, we are unable to conclude that the plan under submission does not have the purpose or effect of abridging the right to vote on account of race. Accordingly, on behalf of the Attorney General I must interpose an objection to the implementation of the redistricting of commissioner precincts in Tripp and Todd Counties submitted by your letter of September 11, 1978.

Of course, under the Procedures for the Administration of Section 5 of the Voting Rights Act (42 C.F.R. 51.21(b) and (c), 51.23, and 51.24) you may request the Attorney General to reconsider this objection. In addition, Section 5 permits you to seek a declaratory judgment from the United States District Court for the District of Columbia that this change does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race, color or membership in a language minority group. However, until the objection is withdrawn or such a judgment is rendered by that Court, the legal effect of the objection by the Attorney General is to render the redistricting change unenforceable.

I would appreciate it if you would inform me of what course of action you intend to follow as soon as possible and an attorney from this Division will be in touch with you in that regard very shortly.

Sincerely,

Drew S. Days III
Assistant Attorney General
Civil Rights Division

DJ 166-012-3
C2476-2477

22 OCT 1979

Honorable Mark Meierhenry
Attorney General
State of South Dakota
State Capitol Building
Pierre, South Dakota 57501

Dear Mr. Attorney General:

This is in reference to the Laws of South Dakota, Chapter 46 (House Bill 1197 of the 1979 Session), entitled "An Act to Provide for the Organization of Unorganized Counties", which establishes new governmental systems for Todd and Shannon Counties, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended. Your submission was completed on August 23, 1979.

Under Section 5 of the Voting Rights Act the submitting authority has the burden of proving that a submitted change has no discriminatory purpose or effect. See, e.g., Georgia v. United States, 411 U.S. 526 (1973); 28 C.F.R. 51.19. In order to determine whether the State of South Dakota has carried that burden in this instance we have given careful consideration to the information you have furnished, as well as to the comments of other interested parties and information gathered through our own research.

Our analysis reveals that the proposed change finds its impetus in Little Thunder v. State of South Dakota, 518 F.2d 1253 (8th Cir. 1975). For many years prior to this decision the predominantly Indian residents of unorganized Todd and Shannon Counties were not permitted to vote for the officials of organized and predominantly white Tripp and Fall River Counties, who provided them with governmental services. The Little Thunder decision invalidated this restriction on the

basis of the Equal Protection Clause of the Fourteenth Amendment. In response to this decision, which provided Todd and Shannon Counties with political access to county government for the first time, residents of Tripp and Fall River Counties and others began a process which resulted in the passage of House Bill 1197 in 1979. The preponderance of evidence suggests that one of the reasons for the passage of House Bill 1197 is to nullify the effects of the Little Thunder decision.

This legislation would sever Tripp County from Todd County, and Fall River County from Shannon County. While these newly organized counties would each have their own governmental bodies, these bodies would be severely and uniquely limited in their ability to carry out governmental functions. The evidence indicates that the county governments of Todd and Shannon Counties provided for in House Bill 1197 would not have sufficient revenues to carry on the normal affairs of county government. In fact House Bill 1197 contemplates contracting by the county governments of the newly organized counties with neighboring counties, but not with Indian tribes, in contrast to other South Dakota counties. The newly organized counties' interim appointed commissions have indeed contracted for these services with the counties to which they were previously attached. These commissions were appointed by the Governor of South Dakota pursuant to House Bill 1197, replacing the elected representatives of Todd and Shannon Counties. The net effect of House Bill 1197, therefore, is to return Todd and Shannon Counties to a position of dependence on Tripp and Fall River Counties for governmental services, while being without electoral participation in either of those counties with respect to both the interim and permanent county governing bodies. The rights of access won in Little Thunder would thus be negated.

Under these circumstances I cannot conclude that the submitting authority has carried its burden of proving that House Bill 1197 will have neither the proscribed discriminatory purpose nor effect. Therefore, on behalf of the Attorney General, I must object to the proposed change.

Of course, as provided by Section 5 of the Voting Rights Act you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that these changes have neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. In addition, the Procedures for the Administration of Section 5 (28 C.F.R. 51.21(b) and (c), 51.23, and 51.26) permit you to request the Attorney General to reconsider the objection. However, until the objection is withdrawn or the judgment from the District of Columbia Court obtained, the effect of the objection by the Attorney General is to make House Bill 1197 (1979) legally unenforceable.

Sincerely,

DREW S. DAYS III
Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

June 19, 1995

The Honorable Joyce Hazeltine
Secretary of State for the State
of South Dakota
State Capitol, Suite 204
500 East Capitol Avenue
Pierre, South Dakota 57501-5070

Dear Ms. Hazeltine:

This refers to the submission to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c, of Chapter 107, S.B. No. 17 (1994) of the State of South Dakota, and Article 5:02 of the administrative rules and regulations of the South Dakota State Board of Elections, which adopt changes (listed in Attachment A) to voter registration and related procedures to, inter alia, implement the National Voter Registration Act of 1993 ("NVRA"), 42 U.S.C. 1973gg to 1973gg-10, for Shannon and Todd Counties in South Dakota. We received your response to our February 21, 1995, request for additional information on April 20, 1995; supplemental information was received on June 9, 1995.

This also refers to the procedures for implementing voter registration at "voter registration agencies" and driver's license locations, inter alia, to implement the NVRA for Todd and Shannon Counties in South Dakota.

We have given careful consideration to the information you have provided, as well as to information from other interested persons. Except as set forth below, the Attorney General does not interpose any objection to the specified changes. However, we note that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the changes. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41). In this regard, the granting of Section 5 preclearance does not preclude the Attorney General or private individuals from filing a civil action pursuant to Section 11 of the NVRA, 42 U.S.C. 1973gg-9.

We cannot reach the same conclusion regarding the procedures for removing registered voters from the registration list, insofar as the procedures provide for sending a registration confirmation notice to persons who have not voted during a four-year period or updated their voter registration information. In this regard, we note that the NVRA specifically provides with respect to such vote removal procedures that the procedures "shall not result in the removal of the name of any person from the official list of voters registered to vote in an election for Federal office by reason of the person's failure to vote." Section 8(b)(2), 42 U.S.C. 1973gg-6(b)(2).

According to 1990 Census data, Shannon and Todd Counties are 93 and 81 percent Native American in population, respectively, while the State of South Dakota is 7 percent Native American in population. Under the proposed procedure, registered voters in Shannon and Todd Counties, South Dakota, who fail to vote within a four-year period or update their voter registration information would be specifically targeted to be included in the state's voter removal program, which can lead to a voter's purge or removal from the voter registration list. This result is directly contrary to the language and purpose of the NVRA, and is likely to have a disproportionately adverse effect on Native American voters in the Section 5 covered counties. The proposed procedures thus appear to eliminate certain of the gains to minority voters mandated by Congress in enacting the NVRA and, accordingly, "would lead to a retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise." Beer v. United States, 425 U.S. 130, 141 (1976).

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.52). In light of the considerations discussed above, I cannot conclude that your burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the voter removal procedures proposed by Chapter 107 insofar as they incorporate the failure to vote within a four-year period as a trigger for mailing a registration confirmation notice.

We note that under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed change has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. See 28 C.F.R. 51.44. In addition, you may request that the Attorney General reconsider the objection.

See 28 C.F.R. 51.45. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the objected-to change continues to be legally unenforceable. Clark v. Roemer, 500 U.S. 646 (1991); 28 C.F.R. 51.10. In addition, our review of the state's submission suggests several areas of concern regarding compliance with the NVRA. First, as you are aware, Section 5 of the NVRA, 42 U.S.C. 1973gg-3, mandates that the state include a voter registration application form for elections in Federal office as a part of an application for a state motor vehicle driver's license, and that the voter registration application not request duplicate information requested on the driver's license application. We understand that the state is considering steps to bring its procedures into greater compliance with these requirements, specifically by joining the driver's license and voter registration forms to one another.

Second, Sections 5 and 9 of the NVRA, 42 U.S.C. 1973gg-3 and 42 U.S.C. 1973gg-7, specify that the voter registration forms used at driver's license locations and voter registration agencies include statements that "if an applicant declines to register to vote, the fact that the applicant had declined to register will remain confidential and will be used only for voter registration purposes," and that "if an applicant does register to vote, the office at which the applicant submits a voter registration application will remain confidential and will be used only for voter registration purposes." We understand that the state is considering amending its voter registration form to include these statements. When the amendments are finalized, Section 5 review will be required prior to implementation in Shannon and Todd Counties.

Third, Chapter 107 requires that certain registered voters respond to a confirmation mailing within 30 days and the failure to respond will result in the registrant being placed on an inactive registration list. However, Section 8(d)(2) of the NVRA, 42 U.S.C. 1973gg-6(d)(2), provides that such persons have until the deadline for mail registration to respond to such notices.

Finally, we note that the preclearance of those provisions of Chapter 107 that enable or permit the state or its political subdivisions to adopt future voting changes does not constitute preclearance of those future changes and, accordingly, Section 5 review will separately be required when those changes are adopted or finalized. See 28 C.F.R. 51.15. The matters for which Section 5 review will be required include, but are not limited to, the following: the designation of additional locations where voter registration may occur or changes in existing locations; any forms or notices developed to implement the NVRA; and any

rules or regulations, or procedures promulgated to implement the NVRA for Shannon and Todd Counties, South Dakota.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the State of South Dakota plans to take concerning this matter. If you have any questions, you should call Zita Johnson-Betts (202-514-8690), an attorney in the Voting Section.

Sincerely,

Deval L. Patrick
Assistant Attorney General
Civil Rights Division

Attachment A

Chapter 107 (1994) includes the following changes:

1. assigns responsibility to the South Dakota Secretary of State to coordinate the state's implementation of the NVRA;

2. designates offices that provide or administer driver's licenses, food stamps, aid to families with dependent children, nutrition programs for women, infants, and children, medicaid, assistance to the disabled, and military recruitment as mandatory voter registration locations, and the county auditor's office and municipal finance officer's office as discretionary voter registration locations;

3. amends voter registration procedures to require the provision of mail registration cards, with instructions on how to properly register (such cards and instructions are to be provided to private entities and individuals);

4. provides standards governing the transmittal and receipt of voter registration applications and the acceptance of voter registration applications, and the preparation of voter registration lists;

5. amends procedures when insufficient information is provided on a voter registration application;

6. authorizes the State Board of Elections to adopt rules and regulations necessary to implement the NVRA, including the development of registration records and forms, such as an acknowledgement notice, confirmation mailing, and an affirmation;

7. provides standards governing the inspection of voter registration records and procedures for obtaining duplicates;

8. amends procedures concerning registrants who move or whose registration record reflects that they have moved;

9. amends procedures for voter registration list maintenance, including the placement of registrants on and the use of an inactive registration list, and the removal of names from the list of eligible registered voters;

10. amends procedures governing changes of address, name changes, and party affiliation changes;

11. adopts Sections 4 to 8 of the NVRA for all elections in South Dakota for which voter registration is required; and

12. adopts procedures that require an applicant for registration at a driver's license station to sign a signature card prescribed by the Department of Commerce and Regulation, and that the signature be digitized and used to prepare the

registration card as provided in Section 12-4-5.

Article 5:02 of the administrative rules and regulations of the South Dakota State Board of Elections includes the following changes:

1. the requirements for a new voter registration form;

2. a statement regarding the prohibited reasons for denying voter registration;

3. agency voter registration instructions (excluding driver's license locations), and the agency voter registration declination form;

4. voter registration instructions for the completion of voter registration forms at locations other than the county auditor's office and agencies;

5. procedures regarding the acknowledgement notice and requirements for the form of the notice, including the acknowledgement notices for valid and invalid or incomplete voter registrations;

6. procedures regarding the confirmation mailing, including record keeping requirements, and the requirements for the form of the confirmation mailing notice;

7. requirements for the form of the affirmation of an inactive voter's address;

8. requirements for the form of the notice regarding the deadline for voter registration; and

9. record keeping specifications regarding voter registration statistics.

DSD:JMC:JV:rjs
DJ 166-012-3
C8242; C7763

George Wilkoff, Esq.
City Attorney
City of Port Arthur
Post Office Box 1089
Port Arthur, Texas 77640

15 JAN 1980

Dear Mr. Wilkoff:

This is in reference to Ordinance No. 79-119, which calls for a referendum election on collective bargaining scheduled for January 19, 1980, in the City of Port Arthur, Jefferson County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended. Your submission was received on December 27, 1979.

According to your letter of submission, Ordinance No. 79-119 was enacted to repeal and supersede Ordinance No. 79-108 which, like Ordinance No. 79-119, provided for the referendum election on collective bargaining scheduled for January 19, 1980. However, on December 21, 1979, prior to our receipt of your present submission, an objection was interposed to the January 19, 1980, referendum election provided for in Ordinance No. 79-108. The purpose of this letter is to advise you that, for the reasons set forth in our letter of December 21, 1979, relating to Ordinance No. 79-108 the Attorney General also objects to the referendum election set forth in Ordinance No. 79-119.

Of course, as provided by Section 5 of the Voting Rights Act you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that these changes have neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. In addition, the Procedures for the Administration of Section 5 (28 C.F.R. 51.21(b) and (c), 51.22, and 51.24) permit you to request the Attorney General to reconsider

George Wikoff, Esq.
City Attorney
City of Port Arthur
Post Office Box 1089
Port Arthur, Texas 77640

15 JAN 1980

Dear Mr. Wikoff:

This is in reference to Ordinance No. 79-119, which calls for a referendum election on collective bargaining scheduled for January 19, 1980, in the City of Port Arthur, Jefferson County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended. Your submission was received on December 27, 1979.

According to your letter of submission, Ordinance No. 79-119 was enacted to repeal and supersede Ordinance No. 79-108 which, like Ordinance No. 79-119, provided for the referendum election on collective bargaining scheduled for January 19, 1980. However, on December 31, 1979, prior to our receipt of your present submission, an objection was interposed to the January 19, 1980, referendum election provided for in Ordinance No. 79-108. The purpose of this letter is to advise you that, for the reasons set forth in our letter of December 31, 1979, relating to Ordinance No. 79-108 the Attorney General also objects to the referendum election set forth in Ordinance No. 79-119.

Of course, as provided by Section 5 of the Voting Rights Act you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that these changes have neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. In addition, the Procedures for the Administration of Section 5 (28 C.F.R. 51.21(b) and (c), 51.33, and 51.34) permit you to request the Attorney General to reconsider

the objection. However, until the objection is withdrawn or the judgment from the District of Columbia Court obtained, the effect of the objection by the Attorney General is to make the referendum election legally unenforceable.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us immediately upon receipt of this letter as to what course of action the City of Port Arthur plans to take with respect to this matter. If you have any questions concerning this letter, please feel free to call Mr. Jose Vigil (202--724-6674) of our staff, who has been assigned to handle this submission. Please refer to File Nos. C8242 and C7763 in any written response to this letter so that your correspondence will be properly channeled.

Sincerely,

JAMES P. TURNER
Acting Assistant Attorney General
Civil Rights Division

JAN 17 1980

Richard G. Sedgeley, Esq.
609 Fannin Building, Suite 1301
Fannin & Texas
Houston, Texas 77002

Dear Mr. Sedgeley:

This is in reference to the procedures to be followed in the January 19, 1980, election of the County School Trustees of Harris County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, and to compliance with Section 5 by the county school trustees with respect to the date of school trustee elections. Your submission was received on December 20, 1979.

The seven members of the board of trustees serve six-year terms, with two or three positions filled every two years. As of November 1, 1972, school trustee elections were held on the first Saturday in October of odd-numbered years. The legal effect of House Bill 275 (1975), was to shift the election date to the first Tuesday after the first Monday in November of odd-numbered years. Before the school trustees had an occasion for holding an election on the new election date, the legislature enacted House Bill 443 (1977), which gave the school trustees discretion to choose from among four possible election dates, including the November date specified by House Bill 275. Pursuant to House Bill 443, the school trustees chose the third Saturday in January of even-numbered years as the election date.

A change of election date is subject to the preclearance requirement of Section 5 of the Voting Rights Act. The school trustees' submission of the choice of the January date was received by the Attorney General on November 25, 1977. More

cc: Public File

information with respect to that submission was requested on January 20 and received on February 28, 1978, and an objection with respect to the choice of the January date was interposed on May 1, 1978. Following a request for reconsideration received on July 3, 1978, I declined, on September 1, 1978, to withdraw the objection.

In brief, the basis for the objection was that black and Mexican-American voters in Harris County would have a lesser opportunity to participate in school trustee elections if those elections were held in January, when there would generally be fewer opportunities for joint elections in areas where most black and Mexican-American voters reside than if those elections were held in November, when they could be held jointly with elections of the City of Houston and of the Houston Independent School District and with constitutional amendment elections. Although the required federal preclearance had not been obtained, the school trustee election was conducted on January 21, 1978.

Your submission with respect to the proposed January 19, 1980, election indicates no changes in circumstances that could provide a basis for the withdrawal of the objection to the choice of the January election date. We note that, according to your submission, in the area that comprises the Houston Independent School District, only 25 polling places are scheduled to be used on January 19, 1980, although this area contains 275 Harris County voting precincts. Since the same adverse effect on minority voters that led to our previous objection would be expected to again peculiarly disadvantage minority voters, were the election held on Janaury 19, 1980, on behalf of the Attorney General I must again object to the county school trustees' choice of election date.

The combined effect of House Bill 275 (1975) and the objections under Section 5 of the Voting Rights Act is that the legal election date for the election held on January 21, 1978, was November 8, 1977, and that the legal election date for the election scheduled to be held on January 19, 1980, was November 6, 1979. Because the two legal election dates are no longer available for use, we believe that the most adequate remedy for the school trustees' failure to comply with Section 5 is for new elections to be held in conjunction with the primary elections of May, 1980, at which time

all seats filled in January, 1978 and those that were to be filled in January, 1980 would be open for election to fill the seats for the remainder of their terms. Any conflict with state law may be resolved through a consent decree filed in a Section 5 enforcement action in federal district court. All future elections would be held in November, unless and until an alternative date is precleared pursuant to Section 5.

To enable us to carry out our responsibility to enforce the Voting Rights Act, please let us know immediately whether the county school trustees accept this proposed schedule of elections.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the county school trustees' choice of election date has neither the purpose nor the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group.

If you have any questions concerning the matters discussed in this letter, please do not hesitate to telephone Voting Section Attorney David Hunter, at 202--724-7189.

Sincerely,

DREW S. DAYS III
Assistant Attorney General
Civil Rights Division

1 FEB 1980

J. C. Reagan, Esq.
Bartram, Reagan,
Burrus & Dierksen
Post Office Box 69
205 North Seguin Avenue
New Braunfels, Texas 78130

Dear Mr. Reagan:

This is in reference to the redistricting of commissioner precincts and the change in the boundaries of Voting Precincts 10 and 14 in Comal County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended. Your submission was received on May 7, 1979. On July 6, 1979, we sent a letter requesting additional information necessary to complete our review of this submission. A copy of that letter is attached.

Our records indicate that, to date, we have received no response to our request. We have obtained answers to some of our questions from other sources; however, we still need the following previously requested information to evaluate properly the changes in question:

1. Maps of the county and of the City of New Braunfels showing the existing boundaries and boundaries after the change with areas of minority population concentrations so indicated; it would be most helpful to have these areas of concentration shown as portions of census enumeration districts if possible.

2. Reasons for selecting the plan that was adopted. (We understand that the Mexican American Legal Defense and Education Fund (MALDEF) submitted two other plans for your consideration.)

3. A description of any verification of the accuracy of the methodology of determining the population and racial composition of split enumeration districts.

4. Any estimates that have been made of the change in the total population or racial or language minority group composition of the county since the 1970 Census.

5. The number of registered voters by race or language minority group for each voting precinct in the county. If exact statistics are not available, please provide your best estimates and the basis for those estimates.

6. Primary and general election results, by precinct, of all contests in which a Mexican American has competed for the position of County Commissioner, Justice of the Peace, Constable, Sheriff, Tax Assessor/Collector, or School Trustee or for any other county office since November 1, 1972. We understand that there was a Mexican American candidate for constable in 1976 and that there is some discrepancy in the election results. Therefore, please provide both unofficial newspaper tallies and official results, by precinct, for this election.

Under Section 5 of the Voting Rights Act the submitting authority has the burden of proving that a submitted change has no discriminatory purpose or effect. See, e.g. Georgia v. United States, 411 U.S. 526 (1973); 28 C.F.R. 51.19. In failing to provide the Attorney General with the information necessary for the proper evaluation of your submission, you have failed to sustain your burden of proof. Therefore, on behalf of the Attorney General, I must object to the submitted changes.

Of course, as provided by Section 5 of the Voting Rights Act you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that those changes have neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color or membership in a language minority group. In addition, the Procedures for the Administration of Section 5 (28 C.F.R. 51.21(b) and (c), 51.23, and 51.24) permit you to request the Attorney General to reconsider the objection and, in this instance, we will reconsider the matter upon receipt of the additional information we previously requested. However,

until the objection is withdrawn or the judgment from the District of Columbia Court obtained, the effect of the objection by the Attorney General is to make the redistricting of commissioner precincts and the changes in Voting Precincts 10 and 14 of Comal County, Texas, legally unenforceable.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us within twenty days of your receipt of this letter what course of action Comal County plans to take with respect to this matter. If you have any questions concerning this letter, please feel free to call Ms. Donna Clarke (202--724-7440) of our staff, who has been assigned to handle this submission.

Sincerely,

DREW S. DAYS III
Assistant Attorney General
Civil Rights Division

1 FEB 1980

Honorable W. L. Harville
Jim Wells County Judge
Post Office Drawer 2030
Alice, Texas 78332

Dear Judge Harville:

This is in reference to the proposed redistricting plan for Jim Wells County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended. Your submission was received on December 12, 1979 and additional information was received on January 2, 1980. Although we were unable to complete our evaluation by January 15, 1980 as you requested, we have expedited our consideration of your submission to the extent possible pursuant to the procedural guidelines for the administration of Section 5 (28 C.F.R. Section 51.22).

We have analyzed carefully the material contained in your submission, data obtained from the Bureau of the Census, and comments from other interested persons. As explained to Mrs. Villareal on January 15, 1980, and to you on January 16, 1980, we found discrepancies in the data furnished on your summary charts and on the maps for the City of Alice with repect to the Census Enumeration Districts contained within proposed Commissioner Precinct One. During her telephone conversation with Elda Gordon of my staff, Mrs. Villareal confirmed that, despite the incongruity reflected in the summary charts, the County Commission is submitting the plan as depicted on the maps provided in the submission to the Attorney General. We have, therefore, reviewed your submission with this understanding.

In light of the inference of racial polarization among voters that emerged from our review of the election returns you provided, we find that the proposed plan has the potential of diluting the minority voting strength that has only recently begun to be realized in several largely Mexican-American voting precincts, which have been distributed among all four Commissioner Precincts. Although the information you have submitted is in large measure ambiguous and confusing, it appears that the proposed plan realistically yields only one district from which a Mexican-American may be elected and distinguishes that district as one that is over-populated and of little practical significance in view of the paucity of road mileage and budget funds allocated to it. Also, several members of the minority community have expressed concern about the conspicuous lack of input from interested members of the minority community, including the current Mexican-American commissioner, in the development of the plan and that Mexican-Americans in Jim Wells County, and especially those who reside in the area known as Rancho Alegre, may be denied effective and responsive representation on the Commissioners Court through the implementation of a plan that places that area within Commissioner Precinct Three. Thus the implementation of this proposed plan would appear to be retrogressive under the standard of Beer v. United States, 425 U.S. 130, 141 (1976).

Under Section 5 of the Voting Rights Act the submitting authority has the burden of proving that a submitted change has no discriminatory purpose or effect. See, e.g., Georgia v. United States, 411 U.S. 526 (1973); 28 C.F.R. 51.19. In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that that burden has been sustained in this instance. Accordingly, on behalf of the Attorney General, I must object to the proposed plan.

Of course, as provided by Section 5 of the Voting Rights Act you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that this change has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group.

In addition, the Procedures for the Administration of Section 5 (28 C.F.R. 51.21(b) and (c), 51.23, and 51.24) permit you to request the Attorney General to reconsider the objection. However, until the objection is withdrawn or the judgment from the District of Columbia Court obtained, the effect of the objection by the Attorney General is to make the implementation of the proposed redistricting plan for Jim Wells County legally unenforceable.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us within twenty days of your receipt of this letter of the course of action the Jim Wells County Commissioners Court plans to take with respect to this matter. If you have any questions concerning this letter, please feel free to call Elda Gordon (202-724-6675), of my staff, who has been assigned to handle this submission.

Sincerely,

Drew S. Days III
Assistant Attorney General
Civil Rights Division

Civil Rights Division

Office of the Assistant Attorney General *Washington, D.C. 20530*

Felix J. Stalls, III, Esq.
County Attorney
Cochran County Courthouse
Room B-2
Morton, Texas 79346

25 FEB 1980

Dear Mr. Stalls:

This is in reference to the redistricting of the commissioners' precincts and the creation of additional voting precincts and polling places in Cochran County, Texas. Preliminary materials relating to these changes were received by us initially on April 16, 1976.

On June 7, 1976, we wrote to the then-County Attorney requesting the information with respect to these voting changes which we believed to be necessary to enable us to determine, as required by Section 5 of the Voting Rights Act, whether the redistricting had the purpose or the effect of abridging the right to vote on account of race, color, or membership in a language minority group. Having received no response and having learned that the addressee of our previous request was no longer in office, on August 21, 1977, we repeated that request to you. (Copies of our letters are attached.) Your responding letter, received by us on December 21, 1977, provided some, but not all, of the information requested and we renewed our request for the unprovided information in our letter of February 21, 1978. (Copy attached). To date we have not received the remainder of the requested information, specifically, answers to our inquiries concerning the number of registered voters, by race, in each commissioner and voting precinct before and after the change.

This information is especially important in reviewing this submission because you have indicated that total population statistics, by race, for the commissioner and voting precincts before and after the change are not available and you were able to provide only percentage estimates. On the other hand, we are aware from experience that the county, in order to conduct its elections, must maintain some record of registered voters and the precincts in which they reside and it would not appear to be a difficult task to identify the Spanish surnamed voters on the lists.

Under Section 5 of the Voting Rights Act the submitting authority has the burden of proving that a submitted change has no discriminatory purpose or effect. See, e.g., Georgia v. United States, 411 U.S. 526 (1973); 28 C.F.R. 51.19. In failing to provide the Attorney General with the information necessary for the proper evaluation of your submission, you have failed to sustain your burden of proof. Therefore, on behalf of the Attorney General, I must object to the submitted changes.

Of course, as provided by Section 5 of the Voting Rights Act you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that these changes have neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. In addition, the Procedures for the Administration of Section 5 (28 C.F.R. 51.21(b), and (c), 51.23, and 51.24) permit you to request the Attorney General to reconsider the objection. Such a request would be particularly appropriate were the county to provide the information which was requested by the Attorney General but never provided. However, until the objection is withdrawn or the judgment from the District of Columbia Court obtained, the effect of the objection by the Attorney General is to make the redistricting of commissioner precincts and the creation of additional voting precincts and polling places legally unenforceable.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us within twenty days of your receipt of this letter what course of action Cochran County plans to take with respect to this matter. If you have any questions concerning this letter, please feel free to call Ms. Hallue E. Wright (202--724-7170) of our staff, who has been assigned to handle this submission.

Sincerely,

Drew S. Days III
Assistant Attorney General
Civil Rights Division

25 FEB 1980

Mr. George H. Spencer
Clemens, Spencer, Welmaker & Finck
1805 National Bank of Commerce Building
San Antonio, Texas 78205

Dear Mr. Spencer:

This is in response to your letter dated January 16, 1980, in which you requested that the Attorney General reconsider his December 7, 1979, objection to the redistricting of Commissioner, Justice of the Peace and Constable Precincts by Atascosa County, Texas, in light of the decision in Garcia v. Uvalde County, 455 F. Supp. 101 (W.D. Tex. 1978), aff'd sub nom. United States v. Uvalde, 439 U.S. 1059 (1979). Your letter was received on January 22, 1980.

In Garcia, the court found (p. 106) that the Attorney General had repeated his request for information which the submitting authority had already stated to be unavailable and concluded that "[t]he submission was, therefore, according to the regulations, complete." The circumstances surrounding the submission from Atascosa County are distinguishable from those present in Uvalde County.

Our initial request for information of January 26, 1977, asked for the number or percent of black or Spanish-heritage residents and voters of each of the precincts, for the results, by voting precinct, of all county elections held since January 1, 1972, in which minority candidates have participated, and for the names and business-hour telephone numbers of Spanish-heritage residents who were consulted regarding the redistricting plan. No response was made to this request nor have we been advised that the requested information is unavailable.

To the contrary, the information requested does appear to be available to the submitting authority since voter lists and county election results are maintained at county offices. Also the undated narrative, "Atascosa County--A Redistricting Proposal," submitted by the county, contains a chart breaking down the 1970 Census population figure for the county into the four proposed commissioner precincts and the narrative of the methodology employed to arrive at those figures suggests that this process could have been followed to determine the pre-redistricting composition of each commissioner precinct.

In addition to these items, an explanation was requested in our letter dated August 11, 1977, of a discrepancy in the data initially submitted from that provided in response to our request for additional information concerning the population figures given for Precinct No. 2. This explanation was never received.

In light of the circumstances noted above, we do not believe this submission can be considered to have been completed as was the one in Uvalde County. Accordingly, the Attorney General is unable to withdraw his objection based on the decision in the cited case. However, as stated in our letter of objection, should the county elect to provide the requested information the Attorney General will evaluate the matter on its merits and determine whether there is a basis for withdrawing the objection.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us within twenty days of your receipt of this letter of the course of action Atascosa County plans to take with respect to this matter. If you have any questions concerning this letter, please feel free to call Ms. Elda Gordon (202--724-6675) of our staff, who has been assigned to handle this submission.

Sincerely,

Drew S. Days III
Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

MAR 5 1980

George Wikoff, Esq.
City Attorney
City of Port Arthur
Post Office Box 1089
Port Arthur, Texas 77640

Dear Mr. Wikoff:

This is in reference to the consolidation of Lakeview, Pear Ridge and Port Arthur, the annexations of the Sabine Pass area (Ordinance Nos. 78-43, 78-44, 78-47, 79-33, 79-34 and 79-67) and Gulf of Mexico tracts (Ordinance Nos. 79-79, 79-103 and 79-116), and the revised council district plan (Ordinance No. 80-02), submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended. Your submission was received on February 5, 1980. In accordance with your request expedited consideration has been given this submission pursuant to the Procedural Guidelines for the Administration of Section 5 (28 C.F.R. 51.22). I am also writing to discuss more fully the overall compliance by the City of Port Arthur, the City of Pear Ridge and the Town of Lakeview with Section 5 of the Voting Rights Act, 42 U.S.C. 1973c.

As you know, on March 24, 1978, a Section 5 objection was interposed to the consolidation of Pear Ridge and Lakeview into Port Arthur. The letter of objection notified the City that "the Attorney General will reconsider his objection to the consolidation should the City of Port Arthur undertake to elect members of its city council from fairly-drawn single-member districts." Since that time our staff has met with representatives of the City on several occasions in an effort to resolve this matter. Your latest proposal to obtain compliance with Section 5 was received on February 5, 1980, as indicated above. We have determined, after analysis, that the expansion of the Port Arthur City Council to eight members elected on an at-large basis from residency districts, instead of the seven previously provided for, does not meet the concerns that led to the objection. Therefore, on behalf of the Attorney General and for the reasons previously stated I must decline to withdraw the objection of March 24, 1978.

We have also examined the voting changes occasioned by the City's annexation of the area known as Sabine Pass. Our analysis shows that these voting changes serve to further exacerbate the dilution of minority voting strength caused by the earlier consolidation of Pear Ridge and Lakeview into the City of Port Arthur. For that reason, therefore, I must, on behalf of the Attorney General, interpose an objection to the annexation. Of course, as with our previous objection, the Attorney General will reconsider this objection should the City of Port Arthur undertake to elect members of its city council from fairly-drawn single-member districts. Also you have the right, as provided by Section 5, to seek a declaratory judgment from the United States District Court for the District of Columbia that these changes have neither the purpose nor the effect of denying or abridging the right to vote on account of race, color or membership in a language minority group.

Absent a declaratory judgment from the District Court for the District of Columbia, of course, the legal effect of the objections is to render the voting changes legally unenforceable. See, e.g., Allen v. State Board of Elections, 393 U.S. 544 (1969); Heggins v. City of Dallas, 469 F. Supp. 739 (N.D. Tex. 1979); Leroy and United States v. City of Houston, C.A. H78-2174 and C.A. H78-2407 (S.D. Tex., July 19, 1979). Notwithstanding the objection of March 24, 1978, the City's failure to obtain a withdrawal of that objection and the objection interposed today, we are aware that most of the voting changes occasioned by the consolidation and annexation have been implemented. Although city-wide councilmanic elections in the expanded Port Arthur have not been conducted, regularly scheduled elections in "old" Port Arthur have been cancelled as have elections in Pear Ridge and Lakeview. The Port Arthur City Council's responsibilities now include governing the former areas of Pear Ridge, Lakeview and Sabine Pass. The City of Port Arthur has provided representation for the Pear Ridge and Lakeview areas by appointing the mayors and councils of the respective municipalities to advisory councils and by establishing procedures for electing successors to these councils. Our staff has requested that the City submit the ordinances establishing these advisory councils for Section 5 review but the City has refused to make the necessary submission.

Under these circumstances, we believe that prompt action must be taken by the City to obtain a withdrawal of the March 24, 1978 objection, the objection interposed today and preclearance of the voting changes occasioned by provisions for the advisory councils, or Port Arthur, Pear Ridge, Lakeview and Sabine Pass must revert to the method of governance and election which existed prior to the consolidation and annexation. Almost two years have passed since the date of the initial objection and we perceive no basis for continued delay. Our experience in enforcing Section 5 in other Texas municipalities, such as Houston, Dallas, and San Antonio, demonstrates that these matters are capable of resolution without the delay that has resulted in the Port Arthur matter.

Thus, I request that you notify us within seven days of receipt of this letter as to what steps the City is willing to take either to obtain a withdrawal of the March 24, 1978 objection and the objection interposed today and to obtain preclearance of the ordinances establishing advisory councils or to revert back to the prior method of governance and election. Our staff remains willing to work with you and the appropriate officials during this time to resolve the matter. However, if we do not receive a firm commitment for a prompt resolution we will institute legal proceedings and request the court to order the necessary relief.

You have also submitted for preclearance, pursuant to Section 5, three ordinances which annexed tracts in the Gulf of Mexico. Since these annexations do not have a dilutive effect on the electorate of Port Arthur, the Attorney General interposes no objection to the annexations contained in Ordinances No. 79-79, 79-103 and 79-116.

If you have any questions regarding these matters please feel free to contact Mr. Robert S. Berman of our Voting Section at 202/724-6680. Mr. Berman is the attorney who is responsible for this matter and he will be available during the next seven days to work with you and the city officials to resolve this matter.

We appreciate your cooperation and it is our hope that this matter can be resolved without the necessity of litigation.

Sincerely,

Drew S. Days III
Assistant Attorney General
Civil Rights Division

cc: George W. Strake, Jr.
Texas Secretary of State

Bernis W. Sadler,
Mayor, City of Port Arthur

George Dibrell,
City Manager of Port Arthur

Robert Q. Keith, Esq.

Jane Macon, Esq.
City Attorney
Post Office Box 9066
San Antonio, Texas 78285

24 MAR 1980

Dear Ms. Macon:

This is in reference to your request for reconsideration of the objection interposed on August 17, 1979, to the change in polling place location of Precinct 205 for the April 7, 1979, municipal election in San Antonio, Texas. The final supplement of your request was received on February 29, 1980.

In our letter of objection of August 17, 1979, we noted that our analysis at that time revealed that the location of the polling place for Precinct 205 at Our Lady of the Lake University was objectionable because of an apparent lack of notice of the location of the polling place in this predominantly Mexican-American precinct, and because of the inaccessibility of the polling place caused by construction work on 24th Street. These conclusions were based in part upon information provided by the former city clerk, Mr. G.V. Jackson, Jr., that the city did not provide notice of the exact location of the polling place on the campus of Our Lady of the Lake University, nor of the alternate routes of entry to the polling place other than the partially closed 24th Street entrance.

Subsequent to our August 17, 1979, objection you have adduced new and substantial evidence that the information previously supplied to us by the city clerk and others was erroneous. You have demonstrated that notice of the exact location of the polling place for Precinct 205 was published bilingually in two newspapers serving San Antonio, and that signs indicating alternate routes of access to the polling place were situated at several locations on election day. Furthermore, your random survey of voters in Precinct 205 has demonstrated that voters were generally familiar with the campus of Our Lady of the Lake University and the alternate routes of access to the polling place other than those blocked by construction on 24th Street. You have also presented information which shows that the voter turnout in Precinct 205 was not significantly different from that in comparable precincts during the April 7, 1979, municipal elections.

After a careful analysis of the newly submitted information and comments from other interested parties, I conclude that an objection is no longer warranted. Therefore, on behalf of the Attorney General, I withdraw the objection previously interposed to the polling place change for Precinct 205 during the April 7, 1979, municipal election in San Antonio.

Sincerely,

Drew S. Days III
Assistant Attorney General
Civil Rights Division

Office of the Assistant Attorney General Washington, D.C. 20530

Edmund F. Benchoff, Esq.
Benchoff & Guidry
316 University Drive
Nacogdoches, Texas 75961

APR 3 1980

Dear Mr. Benchoff:

This is in reference to the 5:2 single-member district election plan for the Nacogdoches Independent School District in Nacogdoches County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended. Your submission was completed on February 5, 1980.

Under Section 5, the district has the burden of proving that the submitted 5:2 plan does not represent a retrogression in the position of black voters in the district and that it does not transgress constitutional limits with respect to black voters. See Beer v. United States, 425 U.S. 130 (1976). See also 28 C.F.R. 51.19. Under White v. Regester, 412 U.S. 755 (1973), and its progeny, to prove the constitutionality of its system, the city must prove that the electoral system is equally open to black and white voters, and that each group has a fair opportunity to elect candidates of its choice.

We have given careful consideration to the information you have provided as well as to comments and information provided by other interested parties. In addition to evidence of a general pattern of racially polarized voting in Nacogdoches County, the City of Nacogdoches and the Nacogdoches Independent School District, we have noted that no black has ever won election to the Nacogdoches Independent School District Board of Trustees. We have also been presented with and

have considered evidence of considerable residential racial segregation in Nacogdoches County.

On the basis of our review, it does not appear that the 5:2 plan submitted by the district, which provides for slim minority population majorities in Election Districts I and II, would offer black voters a fair opportunity to elect candidates of their choice. At the same time, the school district has rejected alternative electoral systems that would offer such an opportunity. For example, our analysis shows that it is possible to devise a plan that would provide for at least one district with a substantial minority population and voting age population majority. The adoption by the Nacogdoches Independent School District of an electoral scheme that would maintain minority voting strength at a minimum level, where alternative options would provide a fair chance for minority participation, is relevant to the question of an impermissible racial purpose in its adoption. See Wilkes County v. United States, 450 F. Supp. 1171 (D. D. C. 1978).

Under the circumstances we are unable to conclude, as we must under Section 5, that the submitted change does not have a racially discriminatory purpose or effect. Accordingly, I must, on behalf of the Attorney General, interpose an objection to the 5:2 single-member district plan now under submission.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that this change has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. In addition, the Procedures for the Administration of Section 5 (28 C.F.R. 51.21(b) and (c), 51.23, and 51.24) permit you to request the Attorney General to reconsider the objection. However, until the objection is withdrawn or the judgment from the District of Columbia Court obtained, the effect of the objection by the Attorney General is to make the 5:2 plan legally unenforceable.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us within twenty days of your receipt of this letter of the course of action the Nacogdoches Independent School District plans

to take with respect to this matter. If you have any questions concerning this letter, please feel free to call Andrew Karron (202-724-7403), of our staff, who has been assigned to handle this submission.

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

U.S. Department of Justice
Civil Rights Division

Office of the Assistant Attorney General Washington, D.C. 20530

J. W. Gary, Esq.
Gary, Thomasson, Hall & Marks
817 N. Carancahua
Post Office Box 371
Corpus Christi, Texas 78403

APR 16 1980

Dear Mr. Gary:

This is in reference to the nine polling place changes and apportionment plan providing for election of four members from single-member districts and three members at-large from residency districts, with staggered terms, for the Corpus Christi Independent School District in Nueces County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended. Your submission was completed on February 25, 1980.

The Attorney General does not interpose any objections to the nine polling place changes. However, we feel a responsibility to point out that Section 5 of the Voting Rights Act expressly provides that the failure of the Attorney General to object does not bar any subsequent judicial action to enjoin the enforcement of such changes.

With respect to the apportionment plan, we have given careful consideration to the materials you have submitted, as well as information and comments from other interested parties. We have noted particularly the history of purposeful racial discrimination by and within the district, an apparent pattern of racial bloc-voting in district elections, and the use of racial campaign tactics in some district elections. We note that the submitted plan provides for only one district in which Mexican-American voters will have a realistic opportunity to elect a representative of their choice, in a school district which is over forty percent Mexican American in population. We note also that Mexican American voters likely would have a viable majority in a second district but for the over-population of proposed District 1. We note further that the provision for residency districts has the same effect of preventing single-shot voting for the at-large seats as the numbered post provision struck down in LULAC v. Williams, C.A. No. 74-C-95 (S.D. Tex., Oct. 2, 1979).

Under Section 5 of the Voting Rights Act the submitting authority has the burden of proving that a submitted change has no discriminatory purpose or effect. See, e.g., Georgia v. United States, 411 U.S. 526 (1973); 28 C.F.R. 51.19. In the particular context of the Corpus Christi Independent School District, the standard of review is governed by the standard expressed in Kirksey v. Board of Supervisors of Hinds County, Mississippi, 554 F.2d 139, 143 (5th Cir. 1977) (en banc):

> The court must then look to the matter of whether the redistricting plan, whether adopted by legislative processes or proposed to be adopted and ordered by the court, will continue in effect an existent denial of access to the minority. Both the Supreme Court and this circuit have firmly held that where a reapportionment plan is formulated in the context of an existent intentional denial of access by minority group members to the political process, and would perpetuate that denial, the plan is constitutionally unacceptable because it is a denial of rights guaranteed under the Fourteenth and Fifteenth Amendments.

In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that your burden of proof has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the submitted apportionment plan.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that this change has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. In addition, the Procedures for the Administration of Section 5 (28 C.F.R. 51.21(b) and (c), 51.23, and 51.24) permit you to request the Attorney General to reconsider the objection. However, until the objection is withdrawn or the judgment from the District of Columbia Court obtained, the effect of the objection by the Attorney General is to make the submitted electoral system legally unenforceable.

The objection here interposed may be readily remedied, as the foregoing discussion of our rationale suggests. If the residency districts for the at-large seats and the over-population of District 1 were eliminated in a fairly drawn 4:3 plan, or if an alternative plan were devised which provided for fair political access for both black and Hispanic minorities, our concerns would be alleviated.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us within twenty days of your receipt of this letter of the course of action the Corpus Christi Independent School District plans to take with respect to this matter. If you have any questions concerning this letter, please feel free to call Ms. Zaida Friedman (202--724-7187) of our staff, who has been assigned to handle this submission.

Sincerely,

Drew S. Days III
Assistant Attorney General
Civil Rights Division

23 JUL 1980

George Wikoff, Esq.
City Attorney
Post Office Box 1089
Port Arthur, Texas 77640

Dear Mr. Wikoff:

This is in reference to Ordinances Nos. 80-57, 80-59, and 80-60 (1980), which provide for a special August 9, 1980, referendum election and changes relating to that election, including five polling place changes and an extension of hours for absentee voting, for the City of Port Arthur in Jefferson County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended. The submitted ordinances indicate that the referendum will be conducted in the consolidated city, including the areas of Lakeview, Pear Ridge and Sabine Pass. Your submission was received on July 18, 1980. In accordance with your request expedited consideration has been given this submission pursuant to the Procedural Guidelines for the Administration of Section 5 (28 C.F.R. 51.22), in order to reach a determination by July 24, 1980.

We have given careful consideration to your proposal to conduct the referendum in the expanded city, notwithstanding the Section 5 objection to the consolidation and annexation. As you know, it is our position that Section 5 of the Voting Rights Act requires that no elections which implement the voting changes occasioned by the consolidation with Lakeview, Pear Ridge, and Sabine Pass may be conducted by the City of Port Arthur until the objection under Section 5 is removed, except elections that are likely to provide a basis for withdrawal of the Section 5 objection to the consolidations,

i.e., elections that are calculated to lead to the adoption of a plan for electing the city governing body which shows promise of "[affording black residents] representation reasonably equivalent to their political strength in the enlarged community." City of Richmond v. United States, 422 U.S. 358, 370 (1975); see also City of Petersburg v. United States, 354 F. Supp. 1021 (D.D.C. 1972), aff'd, 410 U.S. 962 (1973). This is the same principle we enunciated in the similar Houston annexation matter last summer, and in our letters of objection of December 21, 1979, and January 15, 1980, to a special referendum election in the expanded City of Port Arthur.

Pursuant to your request, we have not conducted a Section 5 review of the election plans themselves. However, we must, to some extent, consider the plans to be presented to the expanded city in order to determine whether the plans offer any promise of affording black residents representation reasonably equivalent to their political strength in the expanded city. On the basis of our past experience, it is our view that the 6-3 plan, if enacted, satisfies this test since it offers some promise of remedying the concerns which led to the objection. Thus, if this were the only election plan being presented we would interpose no objection to the conduct of the referendum in the expanded city. However, the proposed referendum also presents to the voters a 4-5 election plan. That plan, if enacted, will not "afford [black residents] representation reasonably equivalent to their political strength in the enlarged community." City of Richmond v. United States, supra. Accordingly, I can perceive no basis for granting Section 5 pre-clearance to your proposal for submitting that plan to the expanded city. Thus, on behalf of the Attorney General I object to the referendum as proposed.

In interposing this objection, however, I stress that the Attorney General will grant Section 5 preclearance to any proposal for the conduct of a referendum in the expanded city so long as the election plan(s) to be presented meet the remedial test defined herein. Thus, the 6-3 plan and/or any other plan which shows promise of providing a basis for removing the objection to the consolidation, could be presented to the voters of the entire city. Should such a referendum be conducted the election plan adopted by the voters would be subject to the Voting Right Act's preclearance requirements, and would be reviewed on its merits with respect to the purpose and effect standards of Section 5.

I should reiterate that the city is not precluded from presenting the 4-5 plan or any other referendum issue to the voters of "old" Port Arthur, i.e., those persons residing within the boundaries of the city as they existed prior to the consolidations and annexation in question. The conduct of such a referendum would be subject to Section 5 preclearance only with regard to any procedural changes that are made in election practices or procedures.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed referendum has neither the purpose nor the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. In addition, the Procedures for the Administration of Section 5 (28 C.F.R. 51.21(b) and (c), 51.23, and 51.24) permit you to request the Attorney General to reconsider the objection. However, until the instant objection is withdrawn or the judgment from the District of Columbia Court obtained, the effect of the objection by the Attorney General is to make the August 9, 1980, special referendum election legally unenforceable.

Since a hearing has been scheduled for July 24, 1980 in United States v. City of Port Arthur, we will notify the office of the Honorable Robert A. Parker, by telephone, of the entry of this objection and will hand-deliver a copy of this letter to the Court prior to the hearing.

We continue to look forward to a prompt resolution of the long-standing Section 5 objection to the consolidation and annexation and it is our hope that the City will promptly propose for presentation to the voters an election plan meeting the remedial standard described herein.

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

8 AUG 1980

Richard G. Sedgeley, Esq.
1301-509 Fannin Building
Houston, Texas 77002

Dear Mr. Sedgeley:

This is in reference to the adoption of numbered posts by the Cleveland Independent School District in Liberty County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended. Your submission was completed on June 18, 1980.

Under Section 5, the District has the burden of proving that the submitted change to numbered posts will not result in a retrogression in the position of black voters in the district and that it will not transgress constitutional limits with respect to black voters. See Beer v. United States, 425 U.S. 130 (1976). See also 28 C.F.R. 51.19.

We have given careful consideration to the information you have provided as well as to comments and information provided by other interested parties. In particular, we have noted that there is evidence of a general pattern of racially polarized voting in the Cleveland Independent School District. On the basis of our review, it does not appear that the adoption of numbered posts, given the racially polarized voting patterns mentioned above, will continue to afford blacks a fair opportunity to elect representatives of their choice.

Under the circumstances we are unable to conclude, as we must under Section 5, that the submitted change does not have a racially discriminatory purpose or effect. Accordingly I must, on behalf of the Attorney General, interpose an objection to the adoption of the change to numbered posts now under submission.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that this change has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. In addition, the Procedures for the Administration of Section 5 (28 C.F.R. §1.21(b) and (c), §1.23, and §1.24) permit you to request the Attorney General to reconsider the objection. However, until the objection is withdrawn or the judgment from the District of Columbia Court obtained, the effect of the objection by the Attorney General is to make the adoption of the numbered post scheme legally unenforceable.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us within twenty days of your receipt of this letter what course of action the Cleveland Independent School District plans to take with respect to this matter. If you have any questions concerning this letter, please feel free to call Andrew Karron (202-724-7403), of our staff, who has been assigned to handle this submission.

Sincerely,

Drew S. Days III
Assistant Attorney General
Civil Rights Division

12 AUG 1980

Honorable T. L. Harville
Jim Wells County Judge
200 North Almond Street
Alice, Texas 78332

Dear Judge Harville:

This is in reference to the February, 1980, redistricting plan for Jim Wells County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended. Your submission was completed on June 13, 1980.

We have analyzed carefully the materials contained in your submission, data obtained from the Bureau of the Census and comments from other interested persons. Our analysis reveals that while the proposed plan adequately deals with some of the concerns we had in the previously submitted plan, the plan continues to dilute the voting strength of the minority concentration that exists in the southern portion of the City of Alice by distributing those voters among all four commissioner precincts. On the other hand, it appears that a number of plans were available to the Commissioners Court that would not have had that effect. The adoption of a plan that would maintain Mexican-American voting strength at a minimum level, where alternative options would provide a fairer chance for minority representation, is relevant to the question of an impermissible racial purpose in its adoption (see Wilkes County v. United States, 450 F. Supp. 1171 (D.D.C. 1978), aff'd 439 U.S. 999; see also, 28 C.F.R. 51.19)), particularly where, as here, the plan was drawn with no significant input from the affected minority group.

Under Section 5 of the Voting Rights Act the submitting authority has the burden of proving that a submitted change has no discriminatory purpose or effect. See, e.g., Georgia v. United States, 411 U.S. 526 (1973); 28 C.F.R. 51.19. In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that that burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the submitted change.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that this change neither has the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. In addition, the Procedures for the Administration of Section 5 (28 C.F.R. 51.21(b) and (c), 51.23, and 51.24) permit you to request the Attorney General to reconsider the objection. However, until the objection is withdrawn or the judgment from the District of Columbia Court obtained, the effect of the objection by the Attorney General is to make the redistricting plan for Jim Wells County, Texas, legally unenforceable.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us within twenty days of your receipt of this letter of the course of action the Jim Wells County Commissioners Court plans to take with respect to this matter. If you have any questions concerning this letter, please feel free to call Ms. Elda Gordon (202--724-7403) of our staff, who has been assigned to handle this submission.

Sincerely,

JAMES P. TURNER
Acting Assistant Attorney General
Civil Rights Division

DJ 166-012-3
D1992-1995

Roland Carlson, Esq.
City Attorney
Post Office Box 1758
Victoria, Texas 77901

SEP 3 1980

Dear Mr. Carlson:

This is in reference to the annexations (Ordinances No. 79-32a (1979), No. 79-34a (1979), No. 80-9a (1980), and No. 80-10a (1980)), to the City of Victoria in Victoria County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended. Your submission was completed on July 10, 1980.

To determine that a change in the composition of a city's population resulting from annexations does not have the effect of abridging the right to vote on account of race, color, or membership in a language minority group, the Attorney General must be satisfied either that the percentage of members of a racial or language minority group has not been appreciably reduced and that voting is not polarized between racial or language groups, or that, nevertheless, the city's electoral system will afford minority groups representation reasonably equivalent to their political strength in the enlarged community. See City of Richmond v. United States, 422 U.S. 358 (1975). See also 28 C.F.R. 51.18.

We have given careful consideration to the information you have provided as well as to comments and information provided by other interested parties. In addition to evidence of a general pattern of racially polarized voting in City of Victoria elections, we have noted that no Black or Mexican American has ever won election to the Victoria City Council under the at-large, majority vote, and designated place features of its electoral system. We have been presented with and have considered demographic information indicating

that it is most likely that the proportion of minority residents of the submitted annexations like their recent predecessors will be significantly smaller than that for the existing City of Victoria, and that the annexations will therefore dilute minority voting strength. The most reliable data before us indicates that the submitted annexations would decrease the combined minority percentage population by at least one percent and that, taken cumulatively with all annexations since 1973, they would decrease the population percentage by over three percent. In the context of Victoria's at-large election system, with its majority vote and designated post requirements, this dilution will not be counterbalanced by an ability on the part of the minority community to elect representation reasonably equivalent to its strength in the enlarged community. See City of Richmond, supra.

Under the circumstances we are, therefore, unable to conclude, as we must under Section 5, that the submitted annexation will not have the proscribed discriminatory purpose or effect. Accordingly, I must, on behalf of the Attorney General, interpose an objection to the submitted annexations.

Should the City of Victoria adopt an electoral system that would afford minority voters an opportunity to elect candidates of their choice, the Attorney General will consider withdrawing this objection. Our analysis has indicated that a plan incorporating single-member districts could offer such a fair opportunity.

Of course, as provided by Section 5 of the Voting Rights Act you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that these changes neither have the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. In addition, the Procedures for the Administration of Section 5 (28 C.F.R. 51.21(b) and (c), 51.23, and 51.24) permit you to request the Attorney General to reconsider the objection. However, until the objection is withdrawn or the judgment from the District of Columbia Court obtained, the effect of the objection by the Attorney General is to make the annexations legally unenforceable.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us within twenty days of your receipt of this letter what course of action the City of Victoria plans to take with respect to this matter. If you have any questions concerning this letter, please feel free to call Andrew Karron (202-724-7403), of our staff, who has been assigned to handle this submission.

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

SEP 2 9 1980

J. C. Reagan, Esq.
Bartram, Reagan, Burrus & Dierkson
P. O. Box 69
New Braunfels, Texas 78130

Dear Mr. Reagan:

This is in reference to your request that the Attorney General reconsider his February 1, 1980, objection under Section 5 of the Voting Rights Act of 1965, 42 U.S.C. 1973c, to the redistricting of commissioner precincts and the change in boundaries of Voting Precincts No. 10 and No. 14 in Comal County, Texas. Your request was completed on February 27, 1980.

The Attorney General objected to these changes because the county had failed to provide sufficient information to enable us to make a determination on the merits of the changes involved and, thereby, had not sustained its burden of proving that these voting changes had neither the purpose nor the effect of discriminating on the basis of race, color, or membership in a language minority group. The information subsequently received from you and from other interested parties leads us to conclude at this time that the county has met that burden and that no objection to those changes is warranted. Therefore, pursuant to the reconsideration guidelines promulgated for the administration of Section 5, 28 C.F.R. 51.23 through 51.25, the objection interposed to the redistricting of Comal County commissioner precincts and the changes in Voting Precincts No. 10 and No. 14 is hereby withdrawn. However, we feel a responsibility to point out that Section 5 of the Voting Rights Act expressly provides that the failure of the Attorney General to object does not bar any subsequent judicial action to enjoin the enforcement of such changes.

Sincerely,

Drew S. Days III
Assistant Attorney General
Civil Rights Division

NOV 4 1980

Mr. Richard Bolf
Wilson County Clerk
P.O. Box 27
Floresville, Texas 78114

Dear Mr. Bolf:

This is in reference to the three polling place changes for Wilson County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended. Your submission was received on September 29, 1980.

With regard to the changes for Voting Box No. 14 in Floresville City, within Commissioner's Precinct No. 4 and Voting Box No. 10 in La Vernia City within Commissioner's Precinct No. 3, the Attorney General does not interpose any objections to the changes in question. However, we feel a responsibility to point out that Section 5 of the Voting Rights Act expressly provides that the failure of the Attorney General to object does not bar any subsequent judicial action to enjoin the enforcement of such changes. In addition, as authorized by Section 5, the Attorney General reserves the right to reexamine this submission if additional information that would otherwise require an objection comes to his attention during the remainder of the sixty-day period.

With respect to the proposed new polling place selected for Voting Box No. 1, Commissioner's Precinct No. 3, however, we cannot reach a like conclusion. In that regard, we have analyzed carefully the information contained in your submission and comments from other interested persons. Our analysis reveals that the new polling place would be approximately one and one-half miles from the present polling place, that there is no public transportation to the proposed polling place, and that the present site is located in close proximity to a heavily minority populated area and is within walking distance to a great majority of the minority registered voters in that precinct. Under the proposed change access to the polling place would be significantly reduced, particularly for minority persons, many of whom we understand are without the use of an automobile. We have, in addition, been presented with no compelling reason why the change is necessary.

Under Section 5 of the Voting Rights Act the submitting authority has the burden of proving that a submitted change has no discriminatory purpose or effect. See, e.g., Georgia v. United States, 411 U.S. 526 (1973), 28 C.F.R. 51.19. In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that that burden has been sustained in this instance. Under these circumstances, therefore, on behalf of the Attorney General, I must interpose an objection to the polling place change for Voting Box No. 1, Commissioner's Precinct No. 3, in Wilson County, Texas.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that this change has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color or membership in a language minority group. In addition, the Procedures for the Administration of Section 5 (28 C.F.R. 51.21(b) and (c), 51.23, and 51.24) permit you to request the Attorney General to reconsider the objection. However, until the objection is withdrawn or the judgment from the District of Columbia Court obtained, the effect of the objection by the Attorney General is to make the polling place change for Voting Box No. 1, Commissioner's Precinct No. 3, legally unenforceable.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us within twenty days of your receipt of this letter what course of action Wilson County plans to take with respect to this matter. If you have any questions concerning this letter, please feel free to call Mr. Max Salazar (202-724-7169) of our staff, who has been assigned to handle this submission.

Sincerely,

Drew S. Days III
Assistant Attorney General
Civil Rights Division

FEB 9 1984

Joe D. Alford, Esq.
West Orange-Cove Consolidated
Independent School District
115 South Border
Orange, Texas 77630

Dear Mr. Alford:

This is in reference to the numbered position and majority vote requirements for the election of the Board of Trustees of the West Orange-Cove Consolidated Independent School District in Orange County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended. Your submission was completed on December 9, 1983.

We have given careful consideration to the information furnished by you as well as information and comments by interested parties. Under the present method of election, school trustees are elected at-large by a plurality vote. Under these circumstances, court decisions, to which we feel obligated to give great weight, indicate that a numbered position system and a majority vote requirement can have the potential for abridging minority voting rights. See Dunston v. Scott, 336 F. Supp 206, 213 (N.D. W.C. 1972); White v. Regester, 412 U.S. 755, 766-767 (1973); Zimmer v. McKeithen, 485 F. 2d 1297, 1305 (5th Cir. 1973), aff'd sub nom. East Carroll Parish School Board v. Marshall, 424 U.S. 636 (1976); and Blacks United for Lasting Leadership v. City of Shreveport, 71 F.R.D. 623, 628, 632, 636 (W.D. La. 1976).

We have not been provided information sufficient to demonstrate that the position system and majority vote requirement will not dilute the potential of the minority

voting rights in the West Orange-Cove Consolidated Independent School District. Although black candidates have been elected to the board of trustees, this was under the at-large, plurality method of election and it has not been shown that the addition of the position system and majority vote requirements will not make it more difficult for black candidates to be elected and will not inhibit the full and equal participation of blacks in the school district's political process.

Section 5 of the Voting Rights Act places upon the submitting authority the burden of proving that submitted changes in voting practices and procedures do not have a racially discriminatory purpose or effect. See, e.g., Georgia v. United States, 411 U.S. 526 (1973); 28 C.F.R. 51.19. Because of the potential for diluting black voting strength inherent in the use of a place system and majority vote requirement in the West Orange-Cove Consolidated Independent School District and because the school district has not advanced any compelling reason for their use, we are unable to conclude that the burden of proof has been sustained and that the imposition of the position system and majority vote requirement, in the context of an at-large election system, does not have a racially discriminatory purpose and will not have a racially discriminatory effect in the West Orange-Cove Consolidated Independent School District. Accordingly, on behalf of the Attorney General, I must interpose an objection to the implementation of the place system and majority vote requirement for the election of members of the Board of Trustees of the West Orange-Cove Consolidated Independent School District.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that these changes neither have the purpose nor will have the effect of denying or abridging the right to vote on account of race, color or membership in a language minority group. In addition, the Procedures for the Administration of Section 5 (28 C.F.R. 51.21(b) and (c), 51.23, and 51.24) permit you to request the Attorney General to reconsider the objection. However, until the objection is withdrawn or the judgment from the District of Columbia Court obtained, the effect of the objection by the Attorney General is to make the use of the place system and majority vote requirement legally unenforceable.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us within seven days of your receipt of this letter what course of action the West Cranes-Cove Consolidated Independent School District plans to take with respect to this matter. If you have any questions concerning this letter, please feel to contact Carl W. Cabot (202--724-7430) of our staff, who is available to discuss this matter with you.

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

FEB 9 1981

Joe D. Alford, Esq.
West Orange-Cove Consolidated
Independent School District
118 South Border
Orange, Texas 77630

Dear Mr. Alford:

This is in reference to the numbered position and majority vote requirements for the election of the Board of Trustees of the West Orange-Cove Consolidated Independent School District in Orange County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended. Your submission was completed on December 9, 1980.

We have given careful consideration to the information furnished by you as well as information and comments by interested parties. Under the present method of election, school trustees are elected at-large by a plurality vote. Under these circumstances, court decisions, to which we feel obligated to give great weight, indicate that a numbered position system and a majority vote requirement can have the potential for abridging minority voting rights. See Dunston v. Scott, 336 F. Supp 206, 213 (N.D. N.C. 1972); White v. Register, 412 U.S. 755, 766-767 (1973); Zimmer v. McKeithen, 485 F. 2d 1297, 1305 (5th Cir. 1973), aff'd sub nom. East Carroll Parish School Board v. Marshall, 424 U.S. 636 (1976); and Blacks United for Lasting Leadership v. City of Shreveport, 71 F.R.D. 623, 628, 632, 636 (W.D. La. 1976).

We have not been provided information sufficient to demonstrate that the position system and majority vote requirement will not dilute the potential of the minority

voting strength in the West Orange-Cove Consolidated Independent School District. Although black candidates have been elected to the Board of Trustees, this was under the at-large, plurality method of election and it has not been shown that the addition of the position system and majority vote requirements will not make it more difficult for black candidates to be elected and will not inhibit the full and equal participation of blacks in the school district's political process.

Section 5 of the Voting Rights Act places upon the submitting authority the burden of proving that submitted changes in voting practices and procedures do not have a racially discriminatory purpose or effect. See, e.g., Georgia v. United States, 411 U.S. 526 (1973); 28 C.F.R. 51.19. Because of the potential for diluting black voting strength inherent in the use of a place system and majority vote requirement in the West Orange-Cove Consolidated Independent School District and because the school district has not advanced any compelling reason for their use, we are unable to conclude that the burden of proof has been sustained and that the imposition of the position system and majority vote requirement, in the context of an at-large election system, does not have a racially discriminatory purpose and will not have a racially discriminatory effect in the West Orange-Cove Consolidated Independent School District. Accordingly, on behalf of the Attorney General, I must interpose an objection to the implementation of the place system and majority vote requirement for the election of members of the Board of Trustees of the West Orange-Cove Consolidated Independent School District.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that these changes neither have the purpose nor will have the effect of denying or abridging the right to vote on account of race, color or membership in a language minority group. In addition, the Procedures for the Administration of Section 5 (28 C.F.R. 51.21(b) and (c), 51.23, and 51.24) permit you to request the Attorney General to reconsider the objection. However, until the objection is withdrawn or the judgment from the District of Columbia Court obtained, the effect of the objection by the Attorney General is to make the use of the place system and majority vote requirement legally unenforceable.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us within twenty days of your receipt of this letter what course of action the West Orange-Cove Consolidated Independent School District plans to take with respect to this matter. If you have any questions concerning this letter, please feel to contact Carl W. Gabel (202--724-7439) of our staff, who is available to discuss this matter with you.

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

AF 166-012-3
D1992-1995; D5041,
D5327-5330, D5367; D5426

MAR 1 9 1981

Charles Bluntzer, Esq.
City Attorney
Post Office Box 1758
Victoria, Texas 77901

Dear Mr. Bluntzer:

This is in reference to your request that the Attorney General reconsider his September 3, 1980, objection under Section 5 of the Voting Rights Act of 1965, 42 U.S.C. 1973c, to four annexations (Ordinance Nos. 79-32a, 79-34a, 79-9a, and 80-10a), and also in reference to your submission of five charter amendments and a three district and four at-large apportionment plan for the City of Victoria in Victoria County, Texas. Because our reconsideration of the outstanding objection is inextricably linked with, and directly affected by, the subsequently submitted charter changes, we have followed our usual practice, described in Section 51.37 of the Procedures for the Administration of Section 5 (46 Fed. Reg. 878) and undertaken our reconsideration of the outstanding objection in conjunction with our review of the charter changes. Accordingly, both the submission and the request for reconsideration were considered completed on January 22, 1981, the date on which the submission of the charter changes and the reapportionment plan was completed.

The submitted charter changes include: an extension of councilmembers' terms from two to three years; the expansion of the city council from five to seven members; the adoption of a 3:4 mixed single-member district-at-large election method; the 2:2:3 staggering of terms so that an election will be held each year for one single-member district representative and one at-large representative; and a change in the runoff primary date. The Attorney General does not interpose any objections to any of these charter amendments or to the three district and four at-large plan. However,

We feel a responsibility to point out that Section 5 of the Voting Rights Act expressly provides that the failure of the Attorney General to object does not bar any subsequent judicial action to enjoin the enforcement of such changes.

With regard to your request that the Attorney General reconsider his objection to the four annexations, in our view the dilution occasioned by these annexations is adequately remedied by the 3:4 method of election adopted by the City and to which we interpose no objection as indicated above. Accordingly, on behalf of the Attorney General, I am withdrawing the objection to the four annexations.

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

JPT:CWG:CEI:spk
DJ 166-012-3
D5627

16 MAR 1982

Mr. S. Sam Ingram
Superintendent, Liberty
Public Schools
P.O. Box 471
Liberty, Texas 77575

Dear Mr. Ingram:

This is in reference to the adoption of the numbered positions system by the Liberty Independent School District in Liberty County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. Your submission was completed on February 12, 1982.

We have given careful consideration to the information furnished by you as well as information and comments by interested parties. Our analysis reveals that blacks constitute a substantial proportion of the population of the Liberty Independent School District and that bloc voting along racial lines appears to exist. It would seem that the adoption of the numbered positions system in the District, when the number of voters, by race and voting pattern in the past are considered, will make it more difficult for black voters to elect candidates of their choice and will restrict their full and equal participation in the District's political process.

Under Section 5 of the Voting Rights Act the submitting authority has the burden of proving that a submitted change has no discriminatory purpose or effect. See, e.g., Georgia v. United States, 411 U.S. 526 (1973); see also Section 51.52(a) of the Procedures for the Administration of Section 5 (28 Fed. Reg. 877a). For the foregoing reasons, I must on behalf of the Attorney General interpose an objection to the adoption of the numbered positions system in the context of at-large elections.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that this change has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color or membership in a language minority group. In addition, the Procedures for the Administration of Section 5 (Section 51.44, 46 Fed. Reg. 878) permit you to request the Attorney General to reconsider the objection. However, until the objection is withdrawn or the judgment from the District of Columbia Court obtained, the effect of the objection by the Attorney General is to make the use of the numbered positions system legally unenforceable.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us within twenty days of your receipt of this Letter of the course of action the Liberty Independent School District plans to take with respect to this matter. If you have any questions concerning this letter, please feel free to call Carl W. Gabel (202-724-7439), Director of the Section 5 Unit of the Voting Section.

Sincerely,

JAMES P. TURNER
Acting Assistant Attorney General
Civil Rights Division

June 3 1981

[illegible]
[illegible]
[illegible] Republic National Bank Building
[illegible], Texas 77002

[illegible] Mr. McCreary:

This is in reference to the reduction in polling places, from thirteen to one, for the Burleson County Hospital District in Burleson County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended. Your submission was received on April 7, 1981.

In our consideration of your submission, we have considered carefully the information furnished by you, along with information and comments provided by other interested parties. Our review and analysis of this matter reveals the following facts: The Burleson County Hospital District has boundaries coterminous with Burleson County which has a population of 12,313, of whom twenty-two percent are black and ten percent are Mexican American. The number of polling places in the District was reduced from thirteen throughout the county to a single location in the City of Caldwell. The effect of this reduction in the number of polling places was a drop in voter participation from approximately 2,200 voters participating in the 1977 election to approximately 500 voters participating in 1979 and 1980 elections.

The bulk of the black population is concentrated in an area known as Clay Station, which is over thirty miles from the District's single polling place in the City of Caldwell. A large percentage of the county's Mexican-American population is found within the City of Somerville which is about nineteen miles from the City of Caldwell. Both of these areas had polling places that were eliminated by the change to a single polling location.

We understand that for the April 4, 1981, election, minorities from the Clay Station and Somerville areas were able to meet the burden placed on them by the use of a single polling place in Caldwell only through a concerted effort with other county voters with similar interests whereby they themselves successfully provided publicity for the election and transportation to the single poll. However, this additional burden imposed upon the minority voters to obtain access to the single poll was caused by the elimination of polling places in areas which are centers of minority population. Thus, the removal of polling places in the minority areas had a disparate impact on minority voters.

Under Section 5, the Burleson County Hospital District has the burden of proving that the reduction in the number of polling places from thirteen to one does not represent a retrogression in the position of minority voters in the district (see Beer v. United States, 425 U.S. 130 (1976)), and that the submitted change has no discriminatory purpose or effect. See, e.g., Georgia v. United States, 411 U.S. 526 (1973); see also Section 51.39(e) of the Procedures for the Administration of Section 5 (46 Fed. Reg. 878). In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that that burden has been sustained in this instance. Thus, on behalf of the Attorney General I must interpose an objection to the continued use of a single polling place in future elections held by the Burleson County Hospital District.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that this change has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color or membership in a language minority group. In addition, the Procedures for the Administration of Section 5 (Section 51.44, 46 Fed. Reg. 878) permit you to request the Attorney General to reconsider the objection and in that connection we have noted your request for a conference "in the event clearance is not anticipated". Because insufficient time remains to grant such a conference during the 60-day period allowed by statute to object we are sending this notification without affording such a conference. However, we would be pleased to hold a conference under the reconsideration procedures referred to above, if you desire and request it. In

any [illegible] until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the effect of the objection by the Attorney General is to make the use of a single polling place for elections held by the Burleson County Hospital District legally unenforceable.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us within twenty days of your receipt of this letter the course of action the Burleson County Hospital District plans to take with respect to this matter. If you have any questions concerning this letter, please feel free to call Carl W. Cabel (202-724-7439), Director of Section 5 Unit of the Voting Section.

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

JUN 5 1981

[illegible] McCreary, Esq.
[illegible] Hines
First City National Bank Building
Houston, Texas 77002

Dear Mr. McCreary:

This is in reference to the reduction in polling places, from thirteen to one, for the Burleson County Hospital District in Burleson County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended. Your submission was received on April 7, 1981.

In our consideration of your submission, we have considered carefully the information furnished by you, along with information and comments provided by other interested parties. Our review and analysis of this matter reveals the following facts: The Burleson County Hospital District has boundaries coterminous with Burleson County which has a population of 12,313, of whom twenty-two percent are black and ten percent are Mexican American. The number of polling places in the District was reduced from thirteen throughout the county to a single location in the City of Caldwell. The effect of this reduction in the number of polling places was a drop in voter participation from approximately 2,300 voters participating in the 1977 election to approximately 500 voters participating in 1979 and 1980 elections.

The bulk of the black population is concentrated in an area known as Clay Station, which is over thirty miles from the District's single polling place in the City of Caldwell. A large percentage of the county's Mexican-American population is found within the City of Somerville which is about nineteen miles from the City of Caldwell. Both of these areas had polling places that were eliminated by the change to a single polling location.

We understand that for the April 4, 1981, election, minorities from the Clay Station and Somerville areas were able to meet the burden placed on them by the use of a single polling place in Caldwell only through a concerted effort with other county voters with similar interests whereby they themselves successfully provided publicity for the election and transportation to the single poll. However, this additional burden imposed upon the minority voters to obtain access to the single poll was caused by the elimination of polling places in areas which are centers of minority population. Thus, the removal of polling places in the minority areas had a disparate impact on minority voters.

Under Section 5, the Burleson County Hospital District has the burden of proving that the reduction in the number of polling places from thirteen to one does not represent a retrogression in the position of minority voters in the district (see Beer v. United States, 425 U.S. 130 (1976)), and that the submitted change has no discriminatory purpose or effect. See, e.g., Georgia v. United States, 411 U.S. 526 (1973); see also Section 51.39(c) of the Procedures for the Administration of Section 5 (46 Fed. Reg. 878). In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that that burden has been sustained in this instance. Thus, on behalf of the Attorney General I must interpose an objection to the continued use of a single polling place in future elections held by the Burleson County Hospital District.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that this change has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color or membership in a language minority group. In addition, the Procedures for the Administration of Section 5 (Section 51.44, 46 Fed. Reg. 878) permit you to request the Attorney General to reconsider the objection and in that connection we have noted your request for a conference "in the event clearance is not anticipated". Because insufficient time remains to grant such a conference during the 60-day period allowed by statute to object we are sending this notification without affording such a conference. However, we would be pleased to hold a conference under the reconsideration procedures referred to above, if you desire and request it. In

any event, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the effect of the objection by the Attorney General is to make the use of a single polling place for elections held by the Burleson County Hospital District legally unenforceable.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us within twenty days of your receipt of this letter the course of action the Burleson County Hospital District plans to take with respect to this matter. If you have any questions concerning this letter, please feel free to call Carl W. Cabel (202-724-7439), Director of Section 5 Unit of the Voting Section.

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

U.S. Department of Justice
Civil Rights Division

Office of the Assistant Attorney General
Washington, D.C. 20530

22 JAN 1982

Jeffrey A. Davis, Esq.
Reynolds, Allen, Cook,
Pannill & Hooper
1100 Milam Building, 16th Floor
Houston, Texas 77002

Dear Mr. Davis:

This is in reference to the redistricting of the commissioners precincts of Uvalde County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. Your submission was received initially on October 29, 1981, and was completed by a corrective supplement on November 23, 1981.

We have made a careful analysis of the information that you have provided, the events surrounding the enactment of the change, the information in our files with respect to prior plans and elections in Uvalde County, and comments and information provided by other interested parties. On the basis of that analysis, we are unable to conclude that the new plan for the redistricting of commissisoners precincts does not have a discriminatory purpose or effect.

Our review of this matter shows that Uvalde County, like other Texas counties, is divided into four commissioners precincts, which are required, under the Fourteenth Amendment, to be equalized in population following decennial censuses. According to the 1980 census, the population of Uvalde County is 22,441, of whom Mexican-Americans constitute 55.5 percent. Because the plan previously in use had been held in violation of the one-person, one-vote requirement of the Fourteenth Amendment (Mata v. White, C.A. No. DR-79-CA-27 (W.D. Tex. Feb. 7, 1980)) the county, in 1981, adopted a new plan, which provides districts of relatively equal population.

Our analysis of the submitted plan indicates that its likely effect will be to dilute the voting strength of Mexican-American residents of Uvalde County. Our research indicates that polarized voting between Anglos and Mexican-Americans exists. Under the proposed plan Mexican-American voters will be able to elect a candidate of their choice to the commissioners' court in only one district, although Mexican-Americans now constitute a majority of the county's population. It would appear, also, that the plan unnecessarily fragments the Mexican-American community by placing an overly large number of Hispanics into Precinct 2 and dividing the remainder between Precincts 1 and 4, with the result that Mexican-American voters will not have a substantial influence on the election of commissioners in but one precinct. Moreover, our research further indicates that a plan which creates districts as equal in population as the adopted plan, and creates two districts in which Mexican-Americans would have a reasonable opportunity to elect candidates of their choice, could have been drawn without difficulty.

Under these circumstances we are unable to conclude, as we must under the Voting Rights Act, that the submitted plan does not have the purpose and will not have the effect of abridging the right to vote on account of membership in a language minority group. See Beer v. United States, 425 U.S. 130, 141 (1976); Wilkes County v. United States, 450 F. Supp. 1168, 1177-78 (D.D.C. 1978), affirmed 439 U.S. 999 (1978); Georgia v. United States, 411 U.S. 538 (1973). Accordingly, on behalf of the Attorney General, I must interpose an objection to the redistricting plan.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that this change neither has the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. In addition, the Procedures for the Administration of Section 5 (Section 51.44, 46 Fed. Reg. 878) permit you to request the Attorney General to reconsider the objection. However, until the objection is withdrawn or the judgment from the District of Columbia court is obtained, the effect of the objection of the Attorney General is to make the 1981 plan legally unenforceable.

Because of the pending litigation concerning the districting of the commissioners precincts of Uvalde County, Mata v. White, supra, I am taking the liberty of providing a copy of this letter to the court and to counsel for the plaintiffs.

Sincerely,

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

cc: Dorwin W. Suttle
United States District Judge

Jose Garza, Esq.

Jerry White
Uvalde County Judge

U. S. Department of Justice
Office of Legislative Affairs

Office of the Assistant Attorney General

WBR:GWJ:PFH:RSB:bhq
166-012-3
D2634

25 JAN 1982

Honorable David Dean
Secretary of State
Elections Division
P. O. Box 12887
Austin, Texas 78711

Dear Mr. Secretary:

This is in reference to the Legislative Redistricting Board Plan Number 1 which provides for the redistricting of the Senate for the State of Texas submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. Your submission was received on December 1, 1981.

We have given careful consideration to the information that you have supplied. In addition, we have examined comments and information provided by other interested persons. As you know, under Section 5 of the Voting Rights Act, the submitting authority has the burden of proving that a submitted change has no discriminatory purpose or effect. See, e.g., Georgia v. United States, 411 U.S. 526 (1973); see also, Procedures for the Administration of Section 5, 28 C.F.R. 51.39(e) (46 Fed. Reg. 878).

In this instance we have received a number of allegations that the plan discriminates against black and Mexican-American voters in certain parts of the state. In fact, your submission itself states:

> It has come to my attention that the submitted Plan may not comply with the Voting Rights Act in all respects. There are claims that under the Plan there is a retrogression in opportunities for minority representation. In my opinion several of these claims are meritorious.

Because of the number of questions which thus have been raised about the plan and because you have requested that we make a decision on this submission on the basis of the information now before us, we are unable to conclude that the state has satisfied its burden of demonstrating that the plan "does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race, color or [membership in a language minority group]." 42 U.S.C. 1973c. Accordingly, on behalf of the Attorney General, I must interpose an objection to the plan.

At the outset, we note that in the ten-year period since the 1970 Census the state's population has increased by 27.1 percent. A significant portion of that increase was experienced in the minority community. This is especially true for the Mexican-American population which increased 44.96 percent since 1970.

The senate districting plan, however, does not appear to reflect this increase in the voting strength of the minority community. The net result seems to be a plan in which minorities enjoy no significant gains even though their percentage of the population has increased and the demography of the state presents several areas for recognizing the increased potential of the minority community. While we recognize there is no obligation to maximize the political impact of a minority group, it has been alleged, and not adequately refuted, that the state's plan, as it affects Bexar and Harris Counties, unnecessarily fragments minority concentrations in such a manner as to dilute the voting strength of the minority communities.

For example, in Bexar County, existing District 19 is underpopulated according to the 1980 Census and thus requires additional persons to meet one person-one vote standards. The proposed plan for this area, however, removes a substantial number of Mexican Americans from this district and adds a larger number of Anglos. The effect of this method of drawing the boundaries for

proposed District 19 appears to be a dilution of Mexican-American voting strength. Regarding Harris County, we have received allegations that the senate districts unnecessarily fragment the minority community and the odd configurations of proposed Districts 6 and 13 lend support to that claim and raise substantial question as to whether the plan, as it affects Harris County, satisfies the requirements of Section 5.

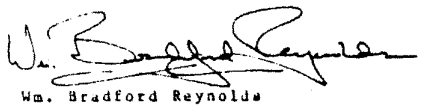
Additionally, we have received allegations that the state used criteria for drawing senate districts in Harris County which differ from the criteria used in drawing senate districts in Dallas County. The claim is that in Harris County the state divided the minority communities among several districts so as to create districts in which minorities could have an "impact" even if they could not elect candidates of their choice. In Dallas County, the minority community apparently was treated as a "community of interest" and the plan seems to recognize the potential of that community to elect candidates of their choice to the senate. The state has presented no information to demonstrate why such divergent criteria were employed or to establish that the use of the seemingly inconsistent criteria does not have a discriminatory effect.

Since the state has failed to demonstrate that the plan is nondiscriminatory it is necessary to interpose an objection. We note, however, that the concerns that lead to this decision are based, in large part, on our being unable to reach the conclusion that the allegations of racial and ethnic discrimination have been sufficently refuted on the basis of the information presently before us. Thus, if the state can present evidence which satisfactorily addresses the issues that have been raised by the complaints referred to above, we would be willing to reconsider this objection pursuant to the applicable provisions of the Procedures for the Administration of Section 5. See, 28 C.F.R. §51.44. If you desire, our staff is also available to meet with you and other state officials to discuss these concerns.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that these changes have neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color or membership in a language minority group. However, until the objection is withdrawn or a judgment from the District of Columbia court is obtained, the effect of this objection is to render the redistricting of the Texas Senate as authorized by the Legislative Redistricting Board's Plan Number 1 legally unenforceable.

If you have any questions concerning this letter, please feel free to call Carl Gabel (202-724-8388), Director of the Section 5 Unit of the Voting Section.

Sincerely



Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

cc: Hon. Mark White
Attorney General
State of Texas

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

25 JAN 1982

Honorable David Dean
Secretary of State
Elections Division
P. O. Box 12887
Austin, Texas 78711

Dear Mr. Secretary:

This is in reference to the Legislative Redistricting Board Plan Number 3 which provides for the redistricting of the House of Representatives for the State of Texas submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. Your submission was received on December 1, 1981.

We have given careful consideration to the information that you have supplied. In addition, we have examined comments and information provided by other interested persons. As you know, under Section 5 of the Voting Rights Act, the submitting authority has the burden of proving that a submitted change has no discriminatory purpose or effect. See, e.g., Georgia v. United States, 411 U.S. 526 (1973); see also, Procedures for the Administration of Section 5, 28 C.F.R. 51.39(e) (46 Fed. Reg. 878).

In this instance we have received a number of allegations that the plan discriminates against black and Mexican-American voters in certain parts of the state. In fact, your submission itself states:

> It has come to my attention that the submitted Plan may not comply with the Voting Rights Act in all respects. There are claims that under the Plan there is a retrogression in opportunities for minority representation. In my opinion several of these claims are meritorious.

Because of the number of questions which thus have been raised about the plan and because you have requested that we make a decision on this submission on the basis of the information now before us, we are unable to conclude that the state has satisfied its burden of demonstrating that the plan "does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race, color or [membership in a language minority group]." 42 U.S.C. 1973c. Accordingly, on behalf of the Attorney General, I hereby interpose an objection to the plan.

At the outset, we note that in the ten-year period since the 1970 Census the state's population has increased by 27.1 percent. A significant portion of that increase was experienced in the minority community. This is especially true for the Mexican-American population which increased 44.96 percent since 1970.

The house districting plan, however, does not accurately reflect this increase in the voting strength of the minority community. The net result seems to be a plan in which minorities enjoy no significant gains even though their percentage of the population has increased and the demography of the state presents opportunities in several areas for recognizing the increased potential of the minority community. While we recognize there is no obligation to maximize the political impact of a minority group it has been alleged that the state's plan, as it affects several areas within the state, fragments minority concentrations in such a manner as to dilute the voting strength of the minority communities.

For example, we have received allegations that in Dallas County the state's plan fragments the Mexican-American community on the west side of the City of Dallas in such a manner as to prevent the creation of a district where Mexican Americans could elect a candidate of their choice. In addition, the sweep of proposed District 100 through the center of the City of Dallas is alleged to dilute the voting strength of Dallas' black community; the contention is that the use of more compactly drawn districts would result in the creation of an additional district in

which black voters would be able to elect a candidate of their choice. It is also alleged that the odd shapes of proposed Districts 142 in Harris County and proposed District 117 in Bexar County serve to dilute the voting strength of the minority communities in these counties.

Another allegation that seems to have some merit concerns the creation of proposed District 68 which consists of Webb, Maverick, Kinney, Val Verde, Terrell, Pecos, Brewster and Presidio Counties. The existing district includes Zavala and Crockett Counties and the state's decision not to include Zavala and Crockett Counties in the proposed district significantly reduced the minority population percentage in the resulting new district. The state has not presented any evidence upon which we can reject the contention that the removal of the two counties was not done for the purpose of diluting minority voting strength.

Finally, it has been alleged that the house plan also adversely affects the minority populations in Lubbock and El Paso Counties. Proposed District 83 in Lubbock County (existing District 75S) has suffered a significant reduction in the minority population percentage. It is alleged that this reduction is detrimental to the continued viability of the district as one in which the minority community could elect candidates of their choice to office. Regarding El Paso County, we have received allegations that the proposed plan does not fairly reflect the voting strength of the Mexican-American community, which has increased significantly over the past ten years.

Since the state has failed to demonstrate that the plan is nondiscriminatory it is necessary to interpose an objection. We note, however, that the concerns that lead to this decision are based, in large part, on our not being able to reach the conclusion that the allegations of racial and ethnic discrimination have been sufficently refuted on the basis of the information presently before us. Thus, if the state can present evidence which satisfactorily addresses the issues that have been raised by the complaints referred to above, we would be willing to reconsider this objection pursuant to the applicable provisions of the Procedures for the Administration of Section 5. See, 28 C.F.R. §51.44. If you desire, our staff is also available to meet with you and other state officials to discuss these concerns.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that these changes have neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color or membership in a language minority group. However, until the objection is withdrawn or a judgment from the District of Columbia court is obtained, the effect of this objection is to render the redistricting of the Texas House of Representatives as authorized by the Legislative Redistricting Board's Plan Number 3 legally unenforceable.

If you have any questions concerning this letter, please feel free to call Carl Gabel (202-724-8388), Director of the Section 5 Unit of the Voting Section.

Sincerely,

W. Bradford Reynolds

W. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

cc: Hon. Mark White
Attorney General
State of Texas

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General — Washington, D.C. 20530

WBR:GWJ:CWJ:PFH:ELG:bhq
DJ 166-012-3
E0840

29 JAN 1982

Honorable David Dean
Secretary of State
Elections Division
P. O. Box 12887
Austin, Texas 78711

Dear Mr. Secretary:

This is in reference to Senate Bill No. 1 (1981) which provides for the Congressional Districts for the State of Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. Your submission was completed on December 7, 1981.

We have given careful consideration to the information provided by you, data available from the Bureau of the Census, and comments and information from interested third parties. We also have considered information relating to the issues raised in Seamon v. Upham, Civil Action No. P-81-49-CA (E.D. Tex.), a lawsuit involving the Congressional reapportionment.

As you are aware, under Section 5 the submitting authority has the burden of proving that a submitted plan does not have a discriminatory purpose or effect. See, e.g., Georgia v. United States, 411 U.S. 526 (1973); see also Section 51.39(c) of the Procedures for the Administration of Section 5 (46 Fed. Reg. 878). Our analysis has revealed that, for the most part, the state has satisfied its burden of demonstrating that the submitted plan is nondiscriminatory in purpose and effect. Concerns remain, however, over the manner in which the congressional district lines were drawn in a portion of south Texas. For that reason I must, on behalf of the Attorney General, interpose a Section 5 objection to the plan because of the manner in which it affects the districts described below.

The area of concern is the area comprising proposed Districts 15 and 27. This portion of South Texas experienced substantial growth during the past decade and the 1980 Census reveals that 67 percent of the persons residing in this area are Mexican Americans. Under the plan as drawn, however, this very significant Mexican-American concentration and growth area seems to be proportioned inequitably between these two districts so that while proposed District 15 is 80.4 percent Mexican American, proposed District 27 is only 52.9 percent Mexican American. We have received allegations that this method of dividing the area dilutes the voting strength of the Mexican-American community as it exists in this area; we are also aware that numerous alternate plans were presented which would not have this effect and that such alternatives were rejected. We are particularly troubled by information indicating that the future population growth in this area (a heavy majority of which likely will continue to be Mexican-American) is projected primarily in Hidalgo and Cameron counties. Thus the inclusion of both of these counties into District 15 may exacerbate the alleged "packing" of Mexican Americans into this district and effectively preclude Mexican-Americans from realizing their potential voting strength in District 27.

For these reasons, therefore, I am persuaded that Section 5 requires an objection. However, we will reconsider the objection if the state can present information demonstrating that our concerns are not well-founded. Likewise, we are available to give prompt attention to the matter if the State alters the plan to remedy the concerns described.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the described changes have neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color or membership in a language minority group. However, until the objection is withdrawn or a judgment from the District of Columbia court is obtained, the effect of this objection is to render the implementation of the provisions of Senate Bill No. 1 (1981) legally unenforceable, because of the manner in which the Bill affects Districts 15 and 27.

If you have any questions concerning this letter, please call Carl Gabel (202-724-8388), Director of the Section 5 Unit of the Voting Section.

Sincerely,

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

WBR:GWJ:PFH:DSC:bhq
DJ 166-012-3
E0840
81-0295

23 FEB 1982

Honorable Mark White
Attorney General of Texas
Supreme Court Building
P. O. Box 12548
Austin, Texas 78711

Dear Mr. Attorney General:

This is in response to your letters dated February 8, 1982 and February 9, 1982 requesting reconsideration of the Section 5 objections interposed on January 25 and 29, 1982. As you know, this Department has recognized the Secretary of State as the official of the State of Texas responsible for submitting the congressional and legislative redistricting plans. Thus we cannot treat your letters of February 8 and 9 as requests for reconsideration of the objections at issue.

However, by letter dated February 9, 1982, the Secretary of State has requested that we reconsider the objections and that review process is currently underway. Your letters and supporting information will be considered in the course of our review and we invite you to submit whatever additional information you deem relevant.

I am enclosing for your information a copy of a letter which we have sent to the Secretary of State regarding the objections of January 25 and 29, 1982.

Sincerely,

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

cc: William P. Hobby
Lieutenant Governor

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

18 FEB 1982

Jeffrey A. Davis, Esq.
Reynolds, Allen, Cook,
Pannill & Hooper
1100 Milam Building, 16th Floor
Houston, Texas 77002

Dear Mr. Davis:

This is in reference to the redistricting of the commissioners precincts of Uvalde County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. Your submission was received on February 4, 1982. As pointed out in your submission, the fact that there is pending litigation, a hold over of incumbent commissioners and the need to prepare for the May 1, 1982 election, all require an expedited review of this submission. The analysis which follows is therefore based on the facts presently available to us. We are prepared, of course, to consider any supplemental information you may wish to provide.

We have made a careful analysis of the information that you have provided, the events surrounding the enactment of the change, the information in our files with respect to prior plans and elections in Uvalde County, and comments and information provided by other interested parties. On the basis of that analysis, we are unable to conclude that the new plan for the redistricting of commissioners precincts does not have a discriminatory purpose or effect.

Our review of this matter shows that Uvalde County, like other Texas counties, is divided into four commissioners precincts which are required, under the Fourteenth Amendment, to be equalized in population following decennial censuses. According to the 1980 census, the population of Uvalde County is 22,441, of whom Mexican-Americans constitute 55.5 percent. Because the plan previously in use had been held in violation of the one-person, one-vote requirement of the Fourteenth Amendment (Mata v. White, C.A. No. DR-79-CA-27 (W.D. Tex. Feb. 7, 1980)) the county, in 1981, adopted a new plan, which provided for districts of relatively equal population. The 1981 plan was submitted for preclearance pursuant to Section 5 of the Voting Rights Act and on January 22, 1982, a timely objection was interposed.

As with the previous plans, our analysis of the current plan under submission indicates that its inevitable effect will be to dilute the voting strength of Mexican-American residents of Uvalde County. For instance, our review shows that this plan, as did the 1981 plan, unnecessarily fragments the Mexican-American community by placing a large number of Mexican-Americans in Precinct 2, while dividing the remaining Mexican-American concentration in the City of Uvalde between Precincts 1 and 4. The plan accomplishes this result through the use of a strange hourglass configuration for which the county has presented no explanation reflecting a legitimate state interest.

This fragmentation has the effect of minimizing the potential voting strength of the Mexican-American citizens of Uvalde County. Under the proposed plan Mexican-Americans stand a clear chance of electing a candidate of their choice to the commissioners court in only one precinct, although they constitute a majority of the county's population. In this regard, while we note the county's representation that proposed Precinct 4 is 65% Mexican-American, our analysis of the census data indicates that the percentage is well below that figure. We are particularly concerned about this discrepancy because applying the stated percentages accompanying your latest submission to the percent populations provided result in between 500 to 600 more Mexican-Americans in the county than established by the census count. Without a clarification of these inconsistencies, we are unable to preclear the current submission. As stated in the January 22, 1982, letter of objection, our research indicates that a logically formulated plan, including districts which meet one-person, one-vote standards, and two districts in which Mexican-Americans would have a reasonable opportunity to elect candidates of their choice, can be drawn without difficulty.

Under these circumstances we are unable to conclude as we must under the Voting Rights Act, that the submitted plan does not have the purpose and will not have the effect of abridging the right to vote on account of membership in a language minority group. See Beer v. United States, 425 U.S. 130, 141 (1976); Wilkes County v. United States, 450 F. Supp. 1168, 1177-78 (D. D.C. 1978), affirmed 439 U.S. 999 (1978); Georgia v. United States, 411 U.S. 538 (1973). Accordingly, on behalf of the Attorney General, I must interpose an objection to the redistricting plan.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that this change neither has the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. In addition, the Procedures for the Administration of Section 5 (Section 51.44, 46 Fed. Reg. 878) permit you to request the Attorney General to reconsider the objection. However, until the objection is withdrawn or the judgment from the District of Columbia court is obtained, the effect of the objection of the Attorney General is to make the 1981 plan legally unenforceable.

Because of the pending litigation concerning the districting of the commissioners precincts of Uvalde County, Mata v. White, supra, I am taking the liberty of providing a copy of this letter to the court and to counsel for the plaintiffs.

Sincerely,

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

cc: Fred Shannon
United States District Judge

Jose Garza, Esq.

Jerry White
Uvalde County Judge

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

12 MAR 1982

Mr. George Wikoff
City Attorney
P. O. Box 1089
Port Arthur, Texas 77640

Dear Mr. Wikoff:

This is in reference to the City of Port Arthur's submission of the proposed consolidation of Port Arthur and Griffing Park, and the submission of a proposed election plan for the enlarged area. Your submission, pursuant to Section 5 of the Voting Rights Act of 1965, was received on February 24, 1982. As you requested, we have given expedited consideration to your submission.

The City's proposed consolidation with Griffing Park is tied to its proposed 4-2-2-1 election plan for the enlarged city. As you know, that plan has already been scrutinized by the three-judge court for the District of Columbia, and that court rejected the majority-vote feature for the at-large seats. In the conduct of our preclearance functions under Section 5 of the Voting Rights Act, we traditionally have considered ourselves to be a surrogate of the district court, seeking to make the kind of decision we believe the court would make if the matter were before it. In that role, therefore, as well as in our role as a party to that lawsuit, we are bound by the district court's decision.

Your request that we preclear the 4-2-2-1 plan essentially asks us to overturn the district court's decision. This we have no authority to do. However, even if we had the authority to make such a determination, we would not be justified in doing so since, by proposing to expand Port Arthur by including overwhelmingly white Griffing Park, Port Arthur has exacerbated the factual context in which the at-large features of the 4-2-2-1 plan would operate.

In light of these circumstances, and on the basis of other information available to us, including the evidence of record and the decision of the court in Port Arthur, Texas v. United States, 517 F. Supp. 987 (D.D.C. 1981), prob. juris. noted, 50 U.S.L.W. 3586 (January 25, 1982), we are unable to conclude that the proposed voting changes are free of a racially discriminatory purpose or effect. Accordingly, on

behalf of the Attorney General, I must interpose an objection under Section 5 to Port Arthur's proposed consolidation with Griffing Park and the proposed election plan (4-2-2-1 plan) for the enlarged area, because of the fact that the proposed election plan incorporates the majority-vote requirement for the two non-mayoral at-large seats.

The City, through its counsel Mr. Welch, has also proposed that, in any event, the Attorney General might preclear the consolidation and 4-2-2-1 plan on the condition that the City is successful before the Supreme Court in overturning the decision of the three-judge court. We know of no authority for the granting of such a "conditional" preclearance, and it would appear to us that, by operation of Section 5 itself, preclearance would be final absent an objection within 60 days of the submission. See, e.g., Morris v. Gressette, 432 U.S. 491 (1977). Accordingly, such action on our part would be neither appropriate nor effective. We do note, however, that the Supreme Court's decision in the pending litigation presumably will decide whether the majority-vote feature of the at-large posts is entitled to Section 5 preclearance. Once that decision is rendered by the Court, the City will be free to resubmit the proposed consolidation with Griffing Park along with such proposed election plan for the enlarged area as may appear appropriate in the context of that decision.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment regarding this matter from the United States District Court for the District of Columbia that these changes neither have the purpose nor will have the effect of denying or abridging the right to vote on account of race, color or membership in a language minority group. However, until such a judgment from the District of Columbia Court is obtained, the effect of the objection by the Attorney General here is to make the proposed consolidation of Port Arthur and Griffing Park, as well as the proposed election plan for the enlarged city (the 4-2-2-1 plan), legally unenforceable.

Sincerely,

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

15 MAR 1982

Mr. Leroy Bieri
President, Board of Trustees
Angleton Independent School District
1900 North Downing Road
Angleton, Texas 77515

Dear Mr. Bieri:

This is in reference to the use of numbered positions for the election of members of the board of trustees for the Angleton Independent School District in Brazoria County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended. Your submission was initially received on October 26, 1981, and supplemental information was received on January 12, 1982.

We note that in a telephone conversation on March 2, 1981, with Ms. Natalie Govan of our staff, Superintendent Wall stated his understanding that state law would require trustees to be elected by a majority vote after the adoption of numbered positions. Based on information which we received from the Office of the Texas Secretary of State, and from our review of Section 23.11 of the Texas Education Code, it appears that school districts are not required to follow a majority-vote rule when numbered positions are adopted but, rather, retain the option of imposing such a requirement. Since it appears, however, that the school district may have intended a change from a plurality-vote to a majority-vote as a part of its submission, we have addressed this change as well as the change to numbered positions in our consideration of your submission under Section 5.

Our analysis reveals that blacks and Mexican Americans constitute approximately twenty-five percent of the population of the Angleton Independent School District and that there are indications that bloc voting along racial and ethnic lines may exist. On the basis of the limited information

that is available, it appears that the addition of the numbered position, with or without the majority-vote requirement, will make it more difficult for minority candidates to be elected, and is likely to inhibit the full and equal participation of minorities in the school district's political process. In this connection, we note the observation in your letter of October 21, 1981, that under the present at-large, plurality-vote system "one particular candidate may be elected by a small group of voters by their voting for only one and refusing to vote for any others," and that under the present method of election "a person may be elected to a position on the board with less than a majority of the vote." This particular method of voting, however, has been recognized by the courts as a means peculiarly helpful to minorities seeking to win representation in an at-large system. Court decisions, to which we feel obligated to give great weight, indicate that a numbered position and majority-vote requirement in the context of the at-large election system for the school board can have the potential for abridging minority voting rights. See White v. Regester, 412 U.S. 755, 766-767 (1973); Zimmer v. McKeithen, 485 F. 2d 1297, 1305 (5th Cir. 1973), aff'd sub nom. East Carroll Parish School Board v. Marshall, 424 U.S. 636 (1976).

Section 5 of the Voting Rights Act places upon the submitting authority the burden of proving that submitted changes in voting practices and procedures do not have a racially discriminatory purpose or effect. See, e.g., Georgia v. United States, 411 U.S. 526 (1973); 28 C.F.R. 51.19. Because of the potential for diluting black voting strength inherent in the use of numbered positions and a majority-vote requirement in the Angleton Independent School District and because the school district has not advanced any compelling reason for these changes, we are unable to conclude that the burden of proof has been sustained and that the imposition of the numbered position and majority-vote requirements, in the context of an at-large election system, does not have a racially discriminatory purpose and will not have a racially discriminatory effect in the Angleton Independent School District. To the extent that the information we have obtained is conflicting with respect to some of the issues involved, the Attorney General is unable to determine that the submitted changes do not have the prohibited purpose or effect of discriminating. See Section 51.39 of the Procedures for the Administration of Section 5 (46 Fed. Reg. 875). Accordingly, on behalf of the Attorney General, I must interpose an objection to the implementation of the numbered position and majority-vote requirements for the election of members of the Board of Trustees of the Angleton Independent School District.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that this change has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color or membership in a language minority group. In addition, the Procedures for the Administration of Section 5 (Section 51.44, 46 Fed. Reg. 878) permit you to request the Attorney General to reconsider the objection. However, until the objection is withdrawn or the judgment from the District of Columbia Court is obtained, the effect of the objection by the Attorney General is to make the use of numbered positions and a majority-vote requirement legally unenforceable.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us within twenty days of your receipt of this letter of the course of action the Angleton Independent School District plans to take with respect to this matter. If you have any questions concerning this letter, please feel free to call Carl W. Gabel (202-724-8388), Director of the Section 5 Unit of the Voting Section.

Sincerely,

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

cc: Mr. Easton Wall
Superintendent

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

MAY 12 1982

Mr. Leroy Bieri
President, Board of Trustees
Angleton Independent School District
1900 North Downing Road
Angleton, Texas 77515

Dear Mr. Bieri:

This is in reference to your request that the Attorney General reconsider his March 15, 1982, objection under Section 5 of the Voting Rights Act of 1965, as amended, to numbered positions and a majority-vote requirement for the Angleton Independent School District in Brazoria County, Texas. Your request was received on March 31, 1982.

We have carefully reviewed the information that you have provided to us, as well as comments and information provided by other interested parties. However, we have not found a basis for the withdrawal of the Attorney General's objection. Therefore, on behalf of the Attorney General, I must decline to withdraw the objection.

Of course, Section 5 permits you to seek a declaratory judgment from the United States District Court for the District of Columbia that these changes have neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color or membership in a language minority group, irrespective of whether the changes have previously been submitted to the Attorney General. As previously noted, until such a judgment is rendered by that court, the legal effect of the objection by the Attorney General is to render the changes in question unenforceable.

Sincerely,

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

4 OCT 1982

Richard G. Sedgeley, Esq.
609 Fannin Building
Suite 1301
Houston, Texas 77002

Dear Mr. Sedgeley:

This is in reference to the election date change from the first Tuesday after the first Monday in November in even-numbered years to the third Saturday in January in odd-numbered years for the election of members to the board of trustees for the Department of Education in Harris County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. Your submission was received on August 4, 1982. Although we noted your request for expedited consideration, we have been unable to respond until this time.

We have considered carefully the information you have provided, as well as comments from other interested parties and information previously provided by the Harris County Department of Education. At the outset, we note that this change to January elections is not significantly different from and raises the same concerns as those which were noted in the previous submissions of November 25, 1977, and December 20, 1979.

Our analysis shows that the submitted change to January would result in holding elections on a date when a significant portion of the county's non-minority population will be voting for local school board members. On the other hand, in the Houston Independent School District (HISD) portion of the county, which contains the predominant proportion of the county's black and Hispanic population, no voting for HISD

school board members will occur nor are there any other significant elections on the proposed January date as there are in November. Thus, our analysis reveals that, even with an increase in the number of polling places as compared to elections previously scheduled for January, the bifurcation of the election from other significant elections in the area encompassed by the HISD will have a significant negative impact on minority voting rights.

Under these circumstances, therefore, I am unable to conclude that the Harris County Department of Education has met its burden of showing that the submitted change does not have the purpose or effect of discriminating against minority voters. Accordingly, I must, on behalf of the Attorney General interpose an objection to the election date change. In this connection, we note that the Attorney General interposed Section 5 objections to similar changes on two previous occasions--May 1, 1978, and January 17, 1980.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that this change has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color or membership in a language minority group. In addition, the Procedures for the Administration of Section 5 (28 C.F.R. 51.44) permit you to request the Attorney General to reconsider the objection. However, until the objection is withdrawn or the judgment from the District of Columbia Court is obtained, the effect of the objection by the Attorney General is to make the requested election date change legally unenforceable. See also 28 C.F.R. 51.9.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action Harris County plans to take with respect to this matter. If you have any questions concerning this letter, please feel free to call Carl W. Gabel (202-724-8388), Director of the Section 5 Unit of the Voting Section.

Sincerely,

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

Mr. Don Savage
City Manager
P. O. Box 209
Pleasanton, Texas 78064

14 OCT 1982

Dear Mr. Savage:

This is in reference to the August 14, 1982, referendum election; the majority vote requirement for the mayor; the implementation of numbered positions for councilmembers; the August 9, 1980, charter commission and charter commission member election; and the adoption of bilingual election procedures for the City of Pleasanton in Atascosa County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. Your submission was completed on August 16, 1982.

The Attorney General does not interpose any objections to the August 14, 1982, and August 9, 1980, referendum elections, the adoption of bilingual election procedures, and the majority vote requirement for the election of the mayor. However, we feel a responsibility to point out that Section 5 of the Voting Rights Act expressly provides that the failure of the Attorney General to object does not bar any subsequent judicial action to enjoin the enforcement of such changes. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.48).

With respect to the implementation of numbered positions for councilmembers, we have considered carefully the information you have provided, as well as comments from other interested parties. Although Hispanics have been elected to the city council under the present method of election (i.e., at-large with plurality vote requirement), our analysis of the available information indicates that the addition of the numbered posi-

cc: Public File

tion requirement will have the effect of making it more difficult for Hispanic candidates to be elected, when compared to the present system. Such a situation would lead to a retrogression in the position of minority voters and thus would have an impermissible effect under the Act. See Beer v. United States, 425 U.S. 130 (1976).

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of proving that a submitted change has no discriminatory purpose or effect. See also, e.g., Georgia v. United States, 411 U.S. 526 (1973); 28 C.F.R. 51.19. Because of the potential for dilution of the Hispanic voting strength inherent in the use of numbered positions and because the city has not advanced any compelling reason for its use, I am unable to conclude that the burden of proof has been sustained and that this change, in the context of an at-large system, does not have a racially discriminatory purpose and will not have a racially discriminatory effect. Accordingly, on behalf of the Attorney General, I must interpose an objection to the implementation of numbered positions for the election of councilmembers.

Of course, as provided by Section 5 of the Voting Rights Act you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that this change has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color or membership in a language minority group. In addition, the Procedures for the Administration of Section 5 (28 C.F.R. 51.44) permit you to request the Attorney General to reconsider the objection. However, until the objection is withdrawn or the judgment from the District of Columbia Court is obtained, the effect of the objection by the Attorney General is to make the implementation of numbered positions legally unenforceable. See also 28 C.F.R. 51.9.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of

the course of action the City of Pleasanton plans to take with respect to this matter. If you have any questions concerning this letter, please feel free to call Carl W. Gabel (202-724-8388), Director of the Section 5 Unit of the Voting Section.

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

15 DEC 1982

Richard G. Sedgeley, Esq.
Suite 1301
601 Fannin Building
Fannin & Texas
Houston, Texas 77002

Dear Mr. Sedgeley:

This is in reference to your request that the Attorney General reconsider his October 4, 1982, objection under Section 5 of the Voting Rights Act of 1965, as amended, to the change in election date from the first Tuesday after the first Monday in November in even-numbered years to the third Saturday in January in odd-numbered years for the election of members of the Harris County Board of School Trustees, Harris County, Texas. Your request was received at your meeting with members of our staff on October 13, 1982.

We have reviewed carefully the information that you have provided to us in support of your request, as well as that already in our files concerning this matter. In this connection, we note the indication in your letter of request that "substantial new information" was available which would be furnished to us but, to date, we have not received that information. However, the information which has been provided is not sufficient to allay the concerns set forth in our October 4, 1982, letter which led to our being unable to conclude that the holding of the elections in January, rather than November, will not have a prohibited disparate impact on minority participation in the electoral process. Therefore, on behalf of the Attorney General, I must decline to withdraw the objection.

Of course, Section 5 permits you to seek a declaratory judgment from the United States District Court for the District of Columbia that this change has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color or membership in a language minority group, irrespective of whether the change previously has been

submitted to the Attorney General. However, until such a judgment is rendered by that court, the legal effect of the objection by the Attorney General is to render the change in question unenforceable. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.9).

In addition, we have noted the request in your letter for permission to conduct an election for Board of Trustee members on the first Saturday in April or the second Saturday in August 1983 if our objection is not withdrawn. The Attorney General can make no determination with regard to that request, since a change which is not finally enacted or capable of administration is not ripe for review by the Attorney General. See 28 C.F.R. 51.20(a). Accordingly, we cannot properly evaluate your submission of an alternate election date unless and until such change is formally adopted. We do observe, however, that the holding of the Harris County Board of School Trustees elections on any date when other elections are not scheduled in the Houston Independent School District area likely would raise the same concerns which led to our October 4, 1982, and prior objections relative to this matter.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action the Harris County Board of School Trustees plans to take. If you have any questions concerning this letter, please feel free to call Carl W. Gabel (202-724-8388), Director of the Section 5 Unit of the Voting Section.

Sincerely,

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

T. 8/15/83 Rec. 8/17/83
WBR:SSC:ELG:dyw
DJ 166-012-3
G9277

August 19, 1983

Mr. Bennie Wolff
Superintendent, Stockdale
Independent School District
P. O. Box 7
Stockdale, Texas 78160

Dear Mr. Wolff:

This is in reference to the use of numbered positions for the election of board members of the Stockdale Independent School District in Wilson County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. Your submission was completed on June 20, 1983.

We have given careful consideration to the information you have submitted, as well as that provided by other interested parties. Our analysis reveals evidence of racially polarized voting in the Stockdale area. Our analysis further reveals that the imposition of numbered positions will make it more difficult for Hispanic voters to elect candidates of their choice than under the present system because the change eliminates the benefits that accrue to minority voters from being able to vote single-shot. Since designated positions often cause head-to-head contests, this would, in effect, amount to a majority vote requirement to win elections, a success the minority would have little likelihood of attaining in the context of the racial bloc voting that seems to exist.

Under Section 5 of the Voting Rights Act, the submitting jurisdiction bears the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. See Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures of the Administration of Section 5

(28 C.F.R. 51.39(e)). In order to show the absence of a racially discriminatory effect, the jurisdiction must demonstrate that the proposed change will not lead to "a retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise." Beer v. United States, 425 U.S. 130, 141 (1976).

In view of the above discussion, it would appear to us that the use of a designated post system of elections for the Stockdale Independent School District will lead to a retrogression in the ability of minority voters to elect candidates of their choice. For that reason, and because the school district has not advanced any compelling reason for the use of numbered positions, I am unable to conclude that the burden of proof has been sustained and that this change, in the context of an at-large system and the racially polarized voting that seems to exist in the Stockdale area, does not have a racially discriminatory effect. Accordingly, on behalf of the Attorney General, I must interpose an objection to the implementation of numbered positions for the election of board members of the Stockdale Independent School District.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the change has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. In addition, Section 51.44 of the guidelines permits you to request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the effect of the objection by the Attorney General is to make the use of numbered positions for the election of board members of the Stockdale Independent School District legally unenforceable. See also 28 C.F.R. 51.9.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action the Stockdale Independent School District

plans to take with respect to this matter. If you have any questions concerning this letter, please feel free to call Sandra S. Coleman (202-724-6718), Deputy Director of the Section 5 Unit of the Voting Section.

Sincerely,

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

20 OCT 1983

Lavon L. Jones, Esq.
Assistant Criminal District
Attorney
P. O. Box 2553
Beaumont, Texas 77704

Dear Mr. Jones:

This is in reference to the dissolution of the Beaumont Independent School District; the creation of a common school district; and its attachment to the South Park Independent School District in Jefferson County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your submission on August 22, 1983. Although we noted your request for expedited consideration, we have been unable to respond until this time.

We have given careful consideration to the information you have provided, as well as comments and information provided by other interested parties. We also have considered the evidence of record concerning the litigation pending in United States v. Texas Education Agency, 699 F.2d 1291 (5th Cir.), cert. denied, 52 U.S.L.W. 3228 (U.S. Oct. 3, 1983).

Our analysis of all available information shows that, at present, the City of Beaumont is divided into two school districts--the Beaumont Independent School District and the South Park Independent School District. Both districts elect a seven-member school board at-large. In the Beaumont Independent School District, which is 40-percent black, blacks have been able to elect three of the seven school board members; in the South Park Independent School District, which is 30-percent black, blacks have been unable to elect any of the seven members to the school board.

The change now under review proposes to create a single school district by abolishing the Beaumont Independent School District, and its integrated school board, and annexing that area to the South Park Independent School District. The enlarged school district would be 36-percent black and would elect its school board on an at-large basis.

Our information is that voting along racial lines exists in these elections and that blacks have been able to elect candidates of their choice in the 40-percent Beaumont Independent School District only by utilizing the technique of single-shot voting. Our analysis also has revealed a widespread concern among minorities and others that the decrease in the black percentage of the population resulting from the annexation to South Park of the Beaumont constituency will have a significant adverse impact on the ability of blacks to elect representatives of their choice to the surviving school board under an at-large election system.

Under Section 5 the county is required to demonstrate that the proposed change affecting voting "does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color." 42 U.S.C. 1973c. See Georgia v. United States, 411 U.S. 526 (1973). See also the Procedures for the Administration of Section 5 (28 C.F.R. 51.39(e)). While the submitting jurisdiction's burden usually is to show that the change will not "lead to a retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise" (Beer v. United States, 425 U.S. 130, 141 (1975)), in the case of an annexation such as that now before us, the proposed change would not have the prohibited effect "as long as the post-annexation electoral system fairly recognizes the minority's political potential" (City of Richmond v. United States, 422 U.S. 358, 378 (1975)). In other words, the system of elections after the change should be one that would afford minorities "representation reasonably equivalent to their political strength in the enlarged community." Id. at 370.

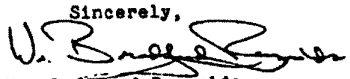
On the basis of our analysis of this submission, we are unable to conclude either that the changes in question will be nonretrogressive for black voters or that the election system will afford blacks "representation reasonably equivalent" to their political strength in the post-annexation school district. Accordingly, on behalf of the Attorney General, I must interpose an objection to the proposed dissolution of the Beaumont Independent School District, the creation of a common school district, and its attachment to the South Park Independent School District.

In this regard, courts consistently have recognized that the Voting Rights Act does not prohibit the territorial expansion of jurisdictions but that such expansions may "be approved only on the condition that modifications calculated to neutralize to the extent possible any adverse effect upon the political participation of black voters are adopted, i. e., that the [jurisdiction] shift from an at-large to a ward system of electing its [officials]." City of Petersburg v. United States, 354 F. Supp 1021, 1031 (D. D.C. 1972), aff'd, 410 U.S. 962 (1973). See also, City of Port Arthur v. United States, 51 U.S.L.W. 4033 (U.S. Dec. 13, 1982); City of Rome v. United States, 446 U.S. 156 (1980); City of Richmond v. United States, supra. Therefore, should the Board of Trustees of the South Park Independent School District undertake to adopt an appropriate election plan for its expanded jurisdiction (see Tex. Educ. Code Ann. §23.024 (Vernon 1983), as amended by Senate Bill No. 1304 (1983)), such action would provide grounds for reconsideration and withdrawal of the objection.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that these changes have neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the effect of the objection by the Attorney General is to make the dissolution of the Beaumont Independent School District, the creation of a common school district, and its attachment to the South Park Independent School District legally unenforceable. 28 C.F.R. 51.9.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action Jefferson County plans to take with respect to this matter. If you have any questions, feel free to call Carl W. Gabel (202-724-8388), Director of the Section 5 Unit of the Voting Section.

Sincerely,



Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

December 27, 1983

Mr. Jack R. Trammell
Superintendent, Pewitt Consolidated
Independent School District
P. O. Box 1106
Omaha, Texas 75571-1106

Dear Mr. Trammell:

This is in reference to the adoption of numbered positions by the Pewitt Consolidated Independent School District in Cass, Morris, and Titus Counties, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received the information to complete your submission on October 28, 1983.

We have given careful consideration to the information furnished by you as well as information and comments by interested parties. Our analysis reveals that blacks constitute a substantial proportion of the population of the Pewitt Consolidated Independent School District and that bloc voting along racial lines appears to exist. Even though blacks do not appear ever to have elected a candidate of their choice to office, under the existing system they do have a potential for doing so through the technique of single-shot voting. However, the addition of the numbered positions system by the district will in effect nullify the advantage of single-shot voting, thus making it more difficult for black voters to elect candidates of their choice. In such circumstances, the proposed change would lead to an impermissible retrogression in the position of minority voters contrary to the Voting Rights Act. See Beer v. United States, 425 U.S. 130 (1976).

Under Section 5 of the Voting Rights Act the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose or a discriminatory effect. See Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.39(e)). In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that that burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the imposition of numbered positions by the Pewitt Consolidated Independent School District.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that this change has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. In addition, Section 51.44 of the guidelines permits you to request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the effect of the objection by the Attorney General is to make the imposition of numbered positions legally unenforceable. 28 C.F.R. 51.9.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action the Pewitt Consolidated Independent School District plans to take with respect to this matter. If you have any questions, feel free to call Carl W. Gabel (202-724-8388), Director of the Section 5 Unit of the Voting Section.

Sincerely,

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

2 APR 1984

Glenn R. Snyder, Esq.
Snyder & Rugaard
P. O. Box 248
DeSoto, Texas 75115

Dear Mr. Snyder:

This refers to the four polling place and the absentee voting location changes for the Wilmer-Hutchins Independent School District in Dallas County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your submission on March 15, 1984. Although we were unable to complete our evaluation by March 22, 1984, as you requested, we have expedited our consideration of your submission to the extent possible pursuant to the Procedures for the Administration of Section 5 (28 C.F.R. 51.32).

We have considered carefully the information you have provided, as well as comments and information provided by other interested parties. At the outset, we note that the greater portion of the school district's population resides in the northern part of the district which is a part of the City of Dallas and is predominantly black. Under the existing arrangement, there are two school district polling places in this area (along with the absentee polling place) and one in the less populated southern portion of the district which contains the Cities of Wilmer, Hutchins, and Lancaster and is predominantly white.

The proposed changes would establish new polling places in the Cities of Wilmer, Hutchins, and Lancaster (in the southern portion of the district) while abolishing one of the two polling places now existing in Dallas in the northern portion of the district and the absentee voting location would be moved from the northern to the southern portion of the district. In addition, the school district has arranged to have its proposed polling places in Wilmer and Hutchins combined with polling places being used for city elections

which are being held on the same day but the district has declined to pursue similar arrangements for City of Dallas residents of the school district where city elections also are being held on the same day. Thus, our information indicates that not only would the school district be moving polling places out of the black community (where the greater proportion of the district's population resides) and into the less populated white areas (Wilmer, Hutchins, and Lancaster), it would also be conferring on white voters the additional advantage of consolidated voting locations for city elections and denying the black voters a similar opportunity.

The school district has not provided any credible reasons, unrelated to race, for its decrease in the facilities that will be available to the predominantly black and more heavily populated northern portion of the district nor for its failure to seek the use of Dallas city polling places for its election. This especially concerns us because we understand that recent efforts by blacks in the district to resolve this situation have been rejected by the school board despite the expressed willingness of the City of Dallas to coordinate polling place locations with the Wilmer-Hutchins School District. No satisfactory explanation has been provided as to why the school board refuses to accommodate the black community's desire to vote in the same location for both city and school elections in the same manner that it accommodated the largely white electorate in the Cities of Wilmer and Hutchins.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color. See Georgia v. United States, 411 U.S. 526 (1973); see also 28 C.F.R. 51.39(e)). In light of the circumstances discussed above, I cannot conclude, as I must under the Voting Rights Act, that that burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the proposed polling place and absentee voting location changes.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that these changes have neither the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. In addition, Section 51.44 of the guidelines permits you to request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the effect of the objection by the Attorney General is to make the proposed polling place and absentee voting location changes legally unenforceable. 28 C.F.R. 51.9.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action the Wilmer-Hutchins Independent School District plans to take with respect to this matter. If you have any questions, feel free to call Carl W. Gabel (202-724-8388), Director of the Section 5 Unit of the Voting Section.

Sincerely,

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

November 9, 1984

Sam Sparks, Esq.
Grambling & Mounce
P. O. Drawer 1977
El Paso, Texas 79950

Dear Mr. Sparks:

This refers to the implementation schedule for the new method of electing members of the board of trustees for the El Paso Independent School District in El Paso County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received the information to complete your submission on September 10, 1984.

The proposal before us is to delay implementation of the single-member district plan for the school board, which plan the Attorney General precleared on August 6, 1984; the single-member district plan was drawn following a decision of the federal district court that the at-large method of electing the school board violates Section 2 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973. Sierra v. El Paso Independent School District, Civ. Action No. EP-83-CA-203 (W.D. Tex.). The submission now before us proposes that the new plan would not immediately be implemented fully but, rather, that elections would be conducted in two districts in 1984 (or as soon thereafter as an election can be scheduled), elections would be conducted in three other districts in 1986, and elections would be conducted in the remaining two districts in 1988.

We have considered carefully the factual information and legal arguments you have submitted on behalf of the proposal, as well as that provided by other interested parties. It appears to us, however, that delaying full implementation of the single-member district plan until 1988 will perpetuate until that time the discriminatory results which the court found to exist in the at-large election system under which current members of the school board were elected. Moreover, there are strong indications that this delay was calculated to deny the minority community, for as long as possible, of the opportunity for equal participation in the electoral process.

In this regard, we cannot help but note that, although the initial election would involve two districts in which Mexican Americans constitute a significant majority of the population, elections in the two other districts in which Mexican Americans constitute a majority of the electorate would be delayed for several years. The school district has not presented any compelling nonracial justification for such a delay in the full enjoyment of rights protected by the Voting Rights Act.

Under Section 5 of the Voting Rights Act, the submitting jurisdiction bears the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. See Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures of the Administration of Section 5 (28 C.F.R. 51.39(e)). In view of the above discussion, I am unable to conclude that that burden has been sustained in this instance. Accordingly, on behalf of the Attorney General, I must interpose an objection to the implementation schedule for the election of board members of the El Paso Independent School District.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the change has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. In addition, Section 51.44 of the guidelines permits you to request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the effect of the objection by the Attorney General is to make the implementation schedule for the election of board members for the El Paso Independent School District legally unenforceable. See also 28 C.F.R. 51.9.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action the El Paso Independent School District plans to take with respect to this matter. If you have any questions concerning this letter, please feel free to call Poli A. Marmolejos (202-724-6718), Attorney Supervisor in our Section 5 Unit of the Voting Section.

Sincerely,

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

JAN 18 1985

Mr. Tony E. Murray
Superintendent, Rusk
Independent School District
204 East Third Street
Rusk, Texas 75785

Dear Mr. Murray:

This refers to the adoption of numbered positions for the Rusk Independent School District in Cherokee County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received information to complete your submission on November 19, 1984.

We have considered carefully the materials furnished by you, information and comments provided by other interested parties, and information in our files relating to similar changes submitted previously by other jurisdictions in Cherokee County. Blacks constitute an estimated 14.8 percent of the general population and 17.1 percent of the student population of the school district, and voting appears to exist along racial lines. Under the existing system, the district's board of trustees is elected at large with staggered terms and a plurality vote requirement; one black has been elected under this system through the technique of single-shot voting.

Our analysis shows that the addition of the numbered positions requirement will, in effect, nullify the ability of blacks to single-shot vote and, thus, significantly reduce, if not extinguish, their potential for electing a candidate of their choice to the school board. In such circumstances, the proposed change would lead to an impermissible retrogression in the position of minority voters contrary to the Voting Rights Act. See Beer v. United States, 425 U.S. 130 (1976).

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has no discriminatory purpose or effect. See Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.39(e)). Under Beer v. United States, supra, the absence of such an effect is shown only when it is demonstrated that there has been no retrogression in the political strength already attained by the affected minority group. In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that the school district's burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the utilization of numbered positions for the election of school board members in the Rusk Independent School District.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that this change has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. In addition, Section 51.44 of the guidelines permits you to request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the effect of the objection by the Attorney General is to make the imposition of numbered positions legally unenforceable. 28 C.F.R. 51.9.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action the Rusk Independent School District plans to take with respect to this matter. If you have any questions, feel free to call Poli A. Marmolejos (202-724-8388), Attorney-Supervisor of the Section 5 Unit of the Voting Section.

Sincerely,

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

February 26, 1985

Mr. E. Max Harris
Superintendent, Liberty-Eylau
Independent School District
2901 FCI Road
Texarkana, Texas 75501

Dear Mr. Harris:

This refers to the December 20, 1972, special election; the January 15, 1973, creation of the Liberty-Eylau Independent School District; and the adoption of numbered positions in 1973 and a majority vote requirement in 1984 for the Liberty-Eylau Independent School District in Bowie County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received information to complete your submission on December 28, 1984.

We have considered carefully the materials furnished by you, relevant 1980 Census data, statistics from the Texas Education Agency, along with information and comments provided by other interested parties. With respect to the December 20, 1972, special election, the January 15, 1973, creation of the Liberty-Eylau Independent School District, and the adoption of numbered positions, the Attorney General does not interpose any objections to these changes. However, we feel a responsibility to point out that Section 5 of the Voting Rights Act expressly provides that the failure of the Attorney General to object does not bar any subsequent judicial action to enjoin the enforcement of such changes. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.48).

With respect to the adoption of the majority vote requirement, however, we are unable to reach a similar conclusion. Our analysis of the information before us indicates that blacks constitute more than 46 percent of the school

district's student population. Our analysis also reveals that blacks constitute at least 37 percent of the total population in the school district and that voting along racial lines appears to exist.

The addition in 1984 of a majority vote requirement occurred immediately after blacks for the first time were successful in seating two members on the school board. Our experience has been that such a requirement serves to increase the likelihood of head-to-head contests between black and white candidates--contests which, in the context of the racial bloc voting which seems to exist in the Liberty-Eylau School District, blacks are unlikely to win. Thus, the addition of the majority vote requirement would appear to lessen the chances of blacks electing candidates of their choice to the Liberty-Eylau School Board.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose or effect. See Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.39(e)). In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that the school district's burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the utilization of the majority vote requirement for the election of members to the Liberty-Eylau Independent School District.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that this change has neither the purpose nor the effect of denying or abridging the right to vote on account of race or color. In addition, Section 51.44 of the guidelines permits you to request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the effect of the objection by the Attorney General is to make the imposition of the majority vote requirement legally unenforceable. 28 C.F.R. 51.9.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action the Liberty-Eylau Independent School District plans to take with respect to this matter. If you have any questions, feel free to call Poli A. Marmolejos (202-724-8388), Attorney-Supervisor of the Section 5 Unit of the Voting Section.

Sincerely,

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

August 6, 1985

Mr. Eldon G. Moody
Chairperson, Dawson County
Democratic Party
P. O. Box 56
Lamesa, Texas 79331

Dear Mr. Moody:

This refers to the bilingual election procedures used by the Democratic Party of Dawson County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received the information to complete your submission on June 7, 1985.

We have given careful consideration to the materials you have submitted, as well as to information and comments from other sources. Members of the local Hispanic community have advised us, and 1980 Census data have confirmed, that a significant proportion of the population of Dawson County communicate effectively only in the Spanish language and, thus, must rely on that language for information respecting elections. In addition, for a large number of those voters it is necessary that such information be given orally.

Our review of the materials you have provided, however, discloses that the Dawson County Democratic Party has made no provision for bilingual election materials or announcements beyond the ballot itself, and that the party failed to make bilingual assistance available at the polls at such times and sites as that assistance was necessary. Furthermore, it appears that the party has placed restrictions upon the voters' choice of persons who may assist them at the polls. For example, we have been advised that at recent elections only poll officials were allowed to enter the polling booth with voters requiring assistance, and you have advised that you personally acted to discourage a private citizen from assisting voters prior to the 1984 election.

In this connection, we call your attention to Section 208 of the Voting Rights Act which expressly provides that a voter who requires assistance in casting a ballot is entitled

cc: Public File

to receive such assistance from any person of the voter's choice, except for the voter's employer, union official or an agent of either. The right to assistance pertains to all phases of the election process, including the actual casting of the ballot. Absent significant evidence to the contrary, it would appear that limitations on this right to assistance may have had the effect in Dawson County of further restricting the already limited opportunities for Spanish-language voters to cast a free and effective ballot.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has no discriminatory purpose or effect. See Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.39(e)). In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that that burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the bilingual election procedures of the Dawson County Democratic Party.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that this change has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. In addition, Section 51.44 of the guidelines permits you to request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the effect of the objection by the Attorney General is to make the bilingual election procedures of the Dawson County Democratic Party legally unenforceable. 28 C.F.R. 51.9.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action the Dawson County Democratic Party plans to take with respect to this matter. If you have any questions, feel free to call Mr. John K. Tanner, Attorney/Reviewer (202-724-6718) in the Section 5 Unit of the Voting Section.

Sincerely,

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

November 8, 1985

Ms. Brenda Adams
City Secretary
P. O. Box 829
El Campo, Texas 77437

Dear Ms. Adams:

This refers to the 1975 imposition of numbered positions and a majority vote requirement, and the 1985 change to the election of four councilmembers by single-member districts and three at large with a new staggering method for the City of El Campo in Wharton County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received the information to complete your submission on September 9, 1985. Although we noted your request for expedited consideration, we have been unable to respond until this time.

We have considered carefully the information you have provided along with that provided by other interested parties. At the outset, we note that until 1975, the City of El Campo elected its seven councilmembers at large with a plurality vote under a staggered term system which required four members to be elected at one election and three at the next. Our analysis shows that, with approximately 39 percent of the population, the minority community in El Campo would have a realistic opportunity to elect candidates of their choice to office in each of the staggered elections. Consequently, this would provide minorities the opportunity to elect at least two of the seven councilmembers by virtue of their ability to single-shot vote under that system. However, the system instituted in 1975, with its majority vote and designated posts requirements, offers no opportunity comparable to that of the pre-1975 system.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has no discriminatory purpose or effect. See Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.39(e)). Under Beer v. United States, 425 U.S. 130 (1976), the absence of such an effect is shown only when it is demonstrated that there has been no retrogression in the political strength that the minority group has already attained. In the context of the circumstances extant in the City of El Campo, where Hispanics have been unable to elect a representative of their choice to office, I cannot conclude, as I must under the Voting Rights Act, that the city has sustained its burden of showing that the 1975 change is void of the proscribed purpose and effect. Therefore, on behalf of the Attorney General, I must object to the election system instituted in 1975 whereby councilmembers are elected at large with numbered positions and the majority vote requirement.

With regard to the 1985 proposal for a mixed plan of elections under which four councilmembers would be elected by districts and three would be elected at large to staggered terms, we are unable, in the absence of the districting plan itself, to determine the effect of that system on the voting rights of affected minority group members. For that reason, and in view of the sixty-day period in which the Attorney General has to act, I must interpose an objection to the proposed 4-3 system of election pending the city's completion of its districting plan. Once that process has been completed and a final plan for implementing the 4-3 concept has been adopted and submitted for review, we will undertake a review of the completed 1985 revision to the city's electoral system under Section 5 of the Voting Rights Act.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that these changes have neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. In addition, Section 51.44 of the guidelines permits you to request that the Attorney General reconsider the objections. However, until the objections are withdrawn or a judgment from the District of Columbia Court is obtained, the effect of the objections by the Attorney General is to make the changes legally unenforceable. 28 C.F.R. 51.9.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action the City of El Campo plans to take with respect to this matter. If you have any questions, feel free to call John K. Tanner (202-724-8388), Attorney/Reviewer of the Section 5 Unit of the Voting Section.

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

November 18, 1985

Honorable J. F. Brandon
Lynn County Judge
P. O. Box 1256
Tahoka, Texas 79373

Dear Judge Brandon:

This refers to the redistricting of justice of the peace and constable precincts and the reduction in the number of justices of the peace and constables from five to two in Lynn County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your response to our request for additional information on September 18, 1985.

We have considered carefully the materials you have provided, as well as information and comments from other interested parties. At the outset, we note that the current plan provides for one district in which minority group members comprise a 57 percent majority, and that the minority population of Lynn County is situated in such a way that a variety of fairly drawn plans would allow the retention or enhancement of that majority. However, when the proposed plan is analyzed with 1980 Census data, the highest combined minority percentage in any district is 51 percent, and both districts have clear white voting age majorities. These facts indicate at least initially that the proposed districting plan would have a retrogressive effect on minority voting strength.

In order to examine further the purpose and effect of the proposed changes, we requested specific additional information, including election returns for all contests within the county which have involved minority candidates, current

voter registration data, and maps showing the location of the county's minority population concentrations so that we could judge their treatment by the proposed districting. To date, much of this information which would enable us to reach a reasoned decision has not been furnished and some of that which has been supplied is not consistent with other information available to us. For example, the population statistics you have provided for the existing districts are, without explanation, significantly different from the statistics provided in connection with our earlier review of those districts when they were adopted in 1982. Thus, while the data used in the plan submitted show whites as constituting only 40 percent of the county's population, the earlier submitted statistics, as well as Census data, show that whites constitute over 58 percent of the county's population, a difference that is not satisfactorily accounted for or explained in the submitted plan.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has no discriminatory purpose or effect. See Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.39(e)). Based on the circumstances discussed above, and in light of evidence of racial bloc voting in local elections and the absence of evidence of an effective opportunity for minority participation in designing the districting plan, we are unable to conclude that the county's burden has been met in this instance. Accordingly, I must, on behalf of the Attorney General, interpose an objection to the proposed districting plan.

With regard to the reduction in the number of justices of the peace and constables, this change does not appear on its face to be objectionable. However, it would be inappropriate to preclear such a change in the absence of a nondiscriminatory districting system for its implementation and, for that reason, an objection also is being interposed to that change pending the county's adoption of a districting plan that meets Section 5 requirements.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that these changes have neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. In addition, Section 51.44 of the guidelines permits you to request that the Attorney General reconsider the objections. However, until the objections are withdrawn or a judgment from the District of Columbia Court is obtained, the effect of the objections by the Attorney General is to make the redistricting and reduction legally unenforceable. 28 C.F.R. 51.9.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action Lynn County plans to take with respect to this matter. If you have any questions, feel free to call John K. Tanner (202-724-8388), Attorney/Reviewer of the Section 5 Unit of the Voting Section.

Sincerely,

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

January 13, 1986

Honorable Charles Stavley
Terrell County Judge
P. O. Box 674
Sanderson, Texas 79848

Dear Judge Stavley:

This refers to the reduction in the number of justices of the peace and constables from four to one and the resulting consolidation of the existing four single-member districts into a single county-wide unit for electing those offices in Terrell County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received the information to complete your submission on December 26, 1985.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has no discriminatory purpose or effect. See Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.39(e)). While we have considered carefully all of the materials and information you have provided in connection with this submission, we cannot conclude that the county has met its burden with respect to the change here under consideration.

According to the information presently available to us, the county, in pursuing its objective to reduce the number of its justices of the peace, had before it two proposals, one of which would have reduced the number from four districts to two and the other of which would reduce the number from four districts to one. In spite of support for the former and opposition to the latter in the minority community, the county nevertheless adopted the latter. We have received comments from local citizens to the effect that this option was selected, at least in part, to assure the removal from office

cc: Public File

of the lone Mexican-American incumbent in existing Precinct 2. Although by our letter of October 8, 1985, we sought additional information to help resolve these issues, the county's response essentially was a denial that the Precinct 2 incumbency was a motivating factor and a denial that a two district alternative was considered. The commissioner court's order of September 10 1984, which you furnished, indicates consideration was given to both plans. Had the county provided a persuasive explanation of the governmental purpose served in preferring the single district plan, negating the contention that it was based on elimination of a minority incumbent, it is likely that the change would have merited preclearance. Should you so desire, such information may still be submitted in support of an application for reconsideration (see 28 C.F.R. §51.44).

Under these circumstances, and as indicated above, I cannot conclude, as I must under the Voting Rights Act, that the county has sustained its burden in this instance. Therefore, on behalf of the Attorney General, I must object to the change to a single justice of the peace elected, of necessity, from the county at large.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that these changes have neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. In addition, Section 51.44 of the guidelines permits you to request that the Attorney General reconsider the objection and we stand ready and willing to reconsider this matter should the county adequately justify the need for reducing its number of justices of the peace to one rather than two. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the effect of the objection by the Attorney General is to make the reduction in the number of justices of the peace and constables from four to one and their concomitant election at large legally unenforceable. 28 C.F.R. 51.9.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action Terrell County plans to take with respect to this matter. If you have any questions, feel free to call John K. Tanner (202-724-8388), Attorney/Reviewer of the Section 5 Unit of the Voting Section.

Sincerely,

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

APR 10 1986

Paul Lyle, Esq.
Day, Owen, Lyle, Voss & Owen
P. O. Box 328
Plainview, Texas 79073-0328

Dear Mr. Lyle:

This refers to the change in the method of election from at large with numbered positions to five single-member districts with two at-large positions; the districting plan; the establishment of five voting precincts and the polling places therefor; and the runoff election procedures for the Plainview Independent School District in Hale County, Texas, submitted to the Attorney pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received the information to complete your submissions on March 27, 1986.

We have considered carefully the information you have provided, information and comments from other interested parties, as well as relevant Bureau of the Census data. Concerning the change in the method of election and the districting plan, the information we have received and our independent analysis reveal strong indications that the plan adopted by the school district was designed to minimize the opportunity for effective political participation by minority citizens. First, we note that rather than adopt a plan of districts coordinated with the districting plan for the City of Plainview, the school board chose a plan of five districts and two at-large seats. The districts of the school board's plan show little relationship to the districts of the city's election plan. As a result of this decision, many voters will be required to visit two polling places on the same day in order to cast ballots for city and school district offices. The information submitted reveals that a primary motivation underlying the submitted plan was to

assure that minority citizens would constitute a voting majority in only one district. This result was achieved by needlessly fragmenting the concentrated minority population among four of the five districts, creating arbitrary divisions among cohesive minority neighborhoods, and linking segments of the minority community with the largely Anglo rural components of the school district. Finally, our analysis reveals that despite requests from the minority community for involvement in the development of a new election system, the school district chose to exclude minority citizens from any effective role in the decision-making process. No adequate nonracial explanation has been furnished by the school board as to any of these choices.

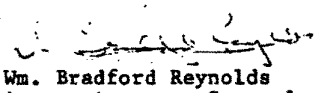
Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has no discriminatory purpose or effect. See Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.39(e)). In light of the considerations discussed above, I am unable to conclude that the school district has satisfied its burden of demonstrating that the submitted election plan was enacted without a purpose of denying or abridging the right to vote of minority citizens. See Busbee v. Smith, 549 F. Supp. 494 (D. D.C. 1982). As a consequence, I must, on behalf of the Attorney General, interpose an objection to the change in the method of election and the districting plan.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that these changes have neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. In addition, Section 51.44 of the guidelines permits you to request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the effect of the objection by the Attorney General is to make the change in the method of election and districting plan legally unenforceable. 28 C.F.R. 51.9.

In light of the Section 5 objection to the above-described changes, we are unable to make a determination concerning the voting precinct, polling place, and runoff procedure changes now. See 28 C.F.R. 51.20(b).

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action the Plainview ISD plans to take with respect to these matters. If you have any questions, feel free to call Poli Marmolejos (202-724-8388), Attorney-Reviewer of the Section 5 Unit of the Voting Section.

Sincerely,



Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

July 18, 1986

Richard B. Collin, Esq.
City Attorney
P. O. Box 829
El Campo, Texas 77437

Dear Mr. Collin:

This refers to the two alternative districting proposals for implementing the city's proposed 4-3 election system, the four proposed polling places for those districts, and your request for reconsideration to the Attorney General's November 8, 1985, objection to the city's proposed election of councilmembers from four single-member districts and three at large, with a majority vote requirement and staggered terms for the City of El Campo in Wharton County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received the information to complete your submission on May 19, 1986.

We have considered carefully the information you have provided, relevant 1980 Census data, information in our files as well as comments and information from other interested parties. Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has no discriminatory purpose or effect. See Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.39(e)). As noted in our previous letter, under Beer v. United States, 425 U.S. 130 (1976), the absence of such an effect is shown only when it is demonstrated that there has been no retrogression in the political strength already attained by minorities in the electoral system.

We note that during the April 5, 1986, elections under the existing system which allows for the at-large election of councilmembers with a plurality of the vote, the city's first minority councilmember was elected by being one of the three top vote-getters for the three council seats that were up for election during this year's contest. From all that presently appears, minorities in the city will have an equal or greater opportunity for similarly electing a candidate of their choice to at least one of the four seats up for election during the city's next election, thus giving them the potential for having at least two members on the council should the present system continue.

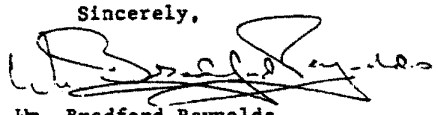
In comparison to the existing plan the proposed 4-3 election plans with a majority vote requirement and the staggering of the three at-large positions (one at-large position to be filled each year) appear to offer less opportunity for effective political participation by minority citizens. The staggering of the at-large seats and the majority vote requirement will make it more difficult for minority citizens to elect candidates of their choice to these positions and the alternate districting plans, by themselves, fail to offer minority citizens an opportunity for effective political participation comparable to that offered by the current election plan. For these reasons, I am unable to conclude that the city has carried the burden imposed by Section 5. Accordingly, on behalf of the Attorney General, I must object to the proposed districting plans and continue the Attorney General's November 8, 1985, objection to the 4-3 method of election with a majority vote requirement and staggered terms.

Of course, as noted in our prior objection letter, under Section 5 of the Voting Rights Act you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that these changes have neither the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. In addition, Section 51.44 of the guidelines permits you to request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the effect of the objection by the Attorney General is to make the changes legally unenforceable. 28 C.F.R. 51.9.

Although the submitted election plan requires us to interpose this Section 5 objection, our action should not be interpreted as indicating that an electoral option including at-large positions, filled concurrently and without majority vote requirements, would fail the Section 5 test. In light of the objection to the proposed districting plans, however, we need not make a determination at this time concerning the four polling places under Section 5. 28 C.F.R. 51.20.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action the City of El Campo plans to take with respect to these matters. If you have any questions, feel free to call Poli A. Marmolejos (202-724-8388), Attorney/Reviewer in our Section 5 Unit of the Voting Section.

Sincerely,



Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

OCT 14 1986

Dr. William J. Campion
President, Trinity Valley Community
College District
500 South Prairieville Street
Athens, Texas 75751

Dear Dr. Campion:

This refers to the February 3, 1986, redistricting plan, the appointment of a board member to fill a vacancy in District 4, and a decrease in the length of the terms of two board members for the Trinity Valley Community College District (formerly known as the Henderson County Junior College District) in Anderson, Henderson, Hunt, Kaufman, and Van Zandt Counties, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received the information to complete your submission on August 12, 1986.

We have considered carefully the information you have provided as well as information received from other interested parties. At the outset, we note that according to the 1980 Census the proposed redistricting plan is significantly malapportioned, with a top-to-bottom deviation of approximately 49 percent. The district with the largest minority population (District 6, 43% black) is overpopulated by approximately 31 percent. We understand that this malapportionment resulted from using registration (rather than population) data as the basis for the apportionment; however, it is now well established that registration data may validly be used only where it produces a plan "not substantially different from that which would have resulted from the use of a permissible population basis." Burns v. Richardson, 384 U.S. 73, 93 (1966). Of particular relevance to our review is the observation that, had the college district prepared a properly apportioned plan otherwise using its stated criteria, District 6 would have been majority black rather than minority black as constituted in the proposed plan. This consequence is highly significant given the racially polarized voting which exists in the Terrell area, where District 6 is located.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. See Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.39(e)). In light of the considerations discussed above and other relevant circumstances, including those surrounding the process that led to the adoption of the plan, I cannot conclude, as I must under the Voting Rights Act, that the college district has carried its burden in this instance of showing the absence of a discriminatory purpose. Therefore, on behalf of the Attorney General, I must object to the redistricting plan submitted by the Trinity Valley Community College District.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that this change has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. In addition, Section 51.44 of the guidelines permits you to request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the effect of the objection by the Attorney General is to make the redistricting plan legally unenforceable. 28 C.F.R. 51.9.

In view of the foregoing objection, it would not be appropriate to reach a determination on the two related changes submitted with the redistricting plan. 28 C.F.R. 51.20(b).

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action the Trinity Valley Community College District plans to take with respect to this matter. If you have any questions, feel free to call Mark A. Posner (202-724-8388), Attorney/Reviewer in the Section 5 Unit of the Voting Section.

Sincerely,

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

December 15, 1986

Richard B. Collins, Esq.
City Attorney
P. O. Box 829
El Campo, Texas 77437

Dear Mr. Collins:

This refers to your request that the Attorney General reconsider the November 8, 1985, and July 18, 1986, objections under Section 5 of the Voting Rights Act of 1965, as amended, to changes in the method of electing councilmembers, and districting plans for implementing those changes, in the City of El Campo in Wharton County, Texas. We received your initial letter on August 18, 1986; supplemental information was received on October 17, 1986.

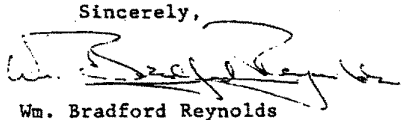
You request that we withdraw the objections to the proposed system of election which requires the election of four members from single-member districts and three members at large with a majority vote requirement for staggered (1-1-1) terms. However, because you provide no new factual or legal grounds for a change in the conclusions previously reached, we find no basis for withdrawing the Attorney General's objections. While we do note that under the existing at-large system the terms of office are staggered on a 3-2-2 basis as opposed to the 4-3 staggering which we had earlier understood to exist, it would still appear to us that the proposed system, with its majority vote requirement and 1-1-1 staggering for the at-large seats, is retrogressive for minorities who have an opportunity to win with a plurality vote in multiple seat contests under the existing system. Accordingly, on behalf of the Attorney General, I must decline to withdraw the objections.

We iterate, however, that our continuation of the objection to the 4-3 system of election should not be interpreted as indicating that the 4-3 system of election would fail the Section 5 test if, in conjunction with fairly drawn single-member districts (Alternate Plan 4 or 5), the three at-large positions were elected concurrently every two years with a plurality vote requirement.

Again we point out that Section 5 permits you to seek a declaratory judgment from the United States District Court for the District of Columbia that these changes have neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group, irrespective of whether the changes previously have been submitted to the Attorney General. However, as also previously noted, until such a judgment is rendered by that court, the legal effect of the objection by the Attorney General is to render the changes in question unenforceable. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.9).

If you have any further questions regarding these matters, feel free to contact Sandra S. Coleman (202-724-6718), Director of the Section 5 Unit of the Voting Section.

Sincerely,



Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

VRR:MAP:GS:gmh
DJ 166-012-3
N4446

Kelly Frels, Esq.
Bracewell & Patterson
2900 South Tower Pennzoil Place
Houston, Texas 77002

DEC 29 1986

Dear Mr. Frels:

This refers to the adoption of a majority vote requirement for the Wharton Independent School District in Wharton County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received the information to complete your submission on October 28, 1986.

We have considered carefully the information you have provided, as well as the information provided by other interested parties. Under the school district's election system, the seven members of the board of trustees are elected at large to numbered posts and serve staggered terms. According to information available to us, voting in Wharton Independent School District elections appears to be polarized along racial and ethnic lines and this voting pattern has hampered the ability of minority voters to elect candidates of their choice. The school district has not provided us with sufficient information to reach a different conclusion.

In this context, the incorporation of a majority vote requirement, which increases the probability of "head-to-head" contests between minority candidates and white candidates, serves to enhance the ability of the majority group to control the election of all board members and thereby exacerbates the election difficulties faced by minority voters. See City of Port Arthur v. United States, 459 U.S. 159 (1982); Rogers v. Lodge, 458 U.S. 613, 627 (1982).

cc: Public File

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has no discriminatory purpose or effect. See Georgia v. United States, 411 U.S. 526 (1973); see also the procedures for the administration of Section 5 (28 C.F.R. 51.39(e)). In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that that burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the majority vote requirement.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that this change has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. In addition, Section 51.44 of the guidelines permits you to request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the effect of the objection by the Attorney General is to make the use of the majority vote requirement legally unenforceable. 28 C.F.R. 51.9.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action the Wharton Independent School District plans to take with respect to this matter. If you have any questions, feel free to call Mark A. Posner (202-724-8388), Attorney/Reviewer in the Section 5 Unit of the Voting Section.

Sincerely,

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

JUN 22 1987

Michael D. Morrison, Esq.
Guinn & Morrison
South Fifth Street
Waco, Texas 76798

Dear Mr. Morrison:

This refers to the change in the method of election from at large to five members elected from single-member districts and two elected at large by numbered position to staggered terms, the districting plan, the implementation schedule, the establishment of four polling places, and the voting precinct realignment for Marlin Independent School District in Falls County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received the information to complete your submission on April 28, 1987.

We have considered carefully the information you have provided, as well as information provided by other interested parties. Our review of this information shows that, even though one minority group member has served on the school board since 1978 without electoral opposition, the six minority candidates who have been in contested elections were unsuccessful, largely because of what appears to be a pattern of racially polarized voting in school district elections. Under the proposed districting plan, the ability of minority voters to participate in the electoral process would seem to be significantly enhanced since they would have the opportunity to elect candidates of their choice in two of the plan's five districts.

However, it also appears that the manner in which the at-large seats are to be elected is calculated to deny to minority voters the opportunity to participate equally in the election of members to fill these two positions on the school board. By designating these positions by number and staggering the terms so that only one at-large position is elected at a time,

the board seems effectively to have precluded minority voters from the opportunity for enhancing their voting potential through use of the election technique of single-shot voting. Were these seats filled on a concurrent basis with the plurality-win feature used in school district elections (and without numbered positions or any other anti-single-shot provision), minority voters would have a realistic opportunity to elect an additional candidate to the board. We have been afforded no nonracial justification for this seemingly unnecessary limitation on minority participation in the electoral process for school board members.

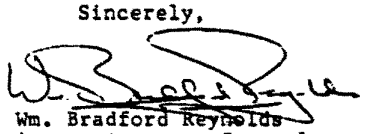
Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has no discriminatory purpose or effect. See Georgia v. United States, 411 U.S. 526 (1973); see also Section 51.52 of the Procedures for the Administration of Section 5 (52 Fed Reg. 497-498 (1987)). In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that that burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the changes here under submission insofar as they incorporate the use of numbered positions and staggered terms for the at-large seats.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that these changes have neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. In addition, Section 51.45 of the guidelines (52 Fed. Reg. 496 (1987)) permits you to request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the effect of the objection by the Attorney General is to make the proposed new method of election legally unenforceable so long as it seeks to have the at-large positions elected by numbered posts to staggered terms. See Section 51.10 (52 Fed. Reg. 492 (1987)).

With regard to the establishment of four polling places and the voting precinct realignment, the Attorney General will make no determination on these changes at this time since they are directly related to the new method of election to which an objection is being interposed. Section 51.22(b) (52 Fed. Reg. 493 (1987)).

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action Marlin Independent School District plans to take with respect to this matter. If you have any questions, feel free to call Sandra S. Coleman (202-724-6718), Director of the Section 5 Unit of the Voting Section.

Sincerely,



Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

October 2, 1987

Honorable Jack M. Rains
Secretary of State of Texas
P. O. Box 12697
Austin, Texas 78711

Dear Mr. Secretary:

This refers to Chapter 2, S.B. No. 88 (1987), which provides for the creation of the Crockett County Hospital District, a referendum requirement, the at-large election of seven directors to two-year, staggered terms by numbered positions and plurality vote, and the method of filling vacancies for the district in Crockett County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received the information to complete your submission on August 3, 1987.

We have considered carefully the information furnished by you as well as information and comments from other interested parties. At the outset, we note that presently Crockett County operates a hospital through a board of directors consisting of six members who are appointed by the county commissioners. The county commissioners are elected from four single-member districts, two of which have Hispanic majorities and are represented by Hispanic commissioners. Two of the members appointed to the present board of hospital directors are Hispanic. Under the proposed system the new hospital district would be governed by a board of seven directors elected at large by numbered positions to staggered terms.

The 1980 Census reveals that Hispanics constitute a substantial proportion of the population in Crockett County and, based on information available to us, bloc voting along racial lines appears to exist. In this context, the at-large system with numbered positions would appear to be the most restrictive on minority voting strength of all the systems available to choose from since numbered positions serve to prevent the use by Hispanic voters of the device known as single-shot voting. These circumstances would seem to preclude any opportunity for Hispanics to elect candidates of their choice to the new hospital governing board and no legitimate nonracial reason has been provided for selecting this method of election.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has no discriminatory purpose or effect. See Georgia v. United States, 411 U.S. 526 (1973); see also Section 51.52(a) of the Procedures for the Administration of Section 5 (52 Fed. Reg. 497-498 (1987)). In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that the burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to Chapter 2, S.B. No. 88 (1987), to the extent that it proposes to use the at-large system with numbered positions for electing the board of directors for the newly created Crockett County Hospital District.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that these changes have neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. In addition, Section 51.45 of the guidelines (52 Fed. Reg. 496 (1987)) permits you to request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the effect of the objection by the Attorney General is to make the at-large system with numbered positions legally unenforceable. See also Section 51.10 (52 Fed. Reg. 492 (1987)).

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action the State of Texas plans to take with respect to this matter. If you have any questions, feel free to call Sandra S. Coleman (202-724-6718), Director of the Section 5 Unit of the Voting Section.

Sincerely,

Wm. Bradford Reynolds

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

JAN 4 1988

Mr. John R. Saul
Superintendent, Columbus
Independent School District
P. O. Box 578
Columbus, Texas 78934

Dear Mr. Saul:

This refers to the adoption of numbered positions and a majority vote requirement for the election of the Board of Trustees for the Columbus Independent School District in Colorado and Austin Counties, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received the information to complete your submission on November 4, 1987.

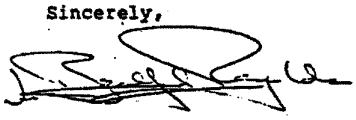
We have given careful consideration to the information furnished by you as well as information and comments by interested parties. At the outset, we note that minorities constitute 23.9 percent of the 1980 Census population and that a pattern of racially polarized voting appears to exist in the Columbus ISD. Under the present method of election school trustees are elected at large by a plurality vote to staggered terms, a system which provides to minority voters a realistic opportunity, through the technique of single-shot voting, to elect a candidate of their choice to the board of education. In this context, the proposed numbered positions would operate to remove the benefits enjoyed by minority voters from the use of single-shot voting and, thus, restrict their ability to participate meaningfully in school board elections. The incorporation of a majority vote requirement, which is likely to promote "head-to-head" contests between minority candidates and white candidates, would serve only to enhance the ability of the majority group to control the election of all board members and thereby exacerbate the election difficulties faced by minority voters. No nonracial justification has been presented to refute the strong inferences that the proposed changes were designed to hinder minority voting opportunities.

Section 5 of the Voting Rights Act places upon the submitting authority the burden of showing that submitted changes in voting practices and procedures do not have a racially discriminatory purpose or effect. See, e.g., Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.52(a)). In view of the circumstances discussed above, we are unable to conclude that the burden of proof has been sustained in this instance. Accordingly, on behalf of the Attorney General, I must interpose an objection to the implementation of the numbered position and majority vote requirements for the election of members of the Board of Trustees of the Columbus ISD.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that these changes have neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. In addition, Section 51.45 of the guidelines permits you to request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the effect of the objection by the Attorney General is to make the use of numbered positions and a majority vote requirement legally unenforceable. 28 C.F.R. 51.10.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action the Columbus ISD plans to take with respect to this matter. If you have any questions, feel free to call Rebecca J. Wertz (202-724-8290), Attorney/Reviewer of the Section 5 Unit of the Voting Section.

Sincerely,



Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General *Washington, D.C. 20530*

January 22, 1988

William T. Armstrong III, Esq.
Foster, Lewis, Langley, Gardner & Banack
Frost Bank Tower
16th Floor
San Antonio, Texas 78205

Dear Mr. Armstrong:

This refers to the change in the method of electing the seven school trustees from at large with numbered positions to five single-member districts and two at-large seats elected by position with staggered terms, the districting plan, the realignment of voting precincts, the creation of five voting precincts and polling places therefor, and the implementation schedule for the Hondo Independent School District in Frio and Medina Counties, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received the information to complete your submission on November 23, 1987.

At the outset, we note that the existing at-large method of election with numbered positions historically has not provided Hispanic voters with an effective opportunity to elect candidates of their choice. By providing for two majority Hispanic districts, however, the proposed change in the method of election and districting plan for the school board increase the possibility for the Hispanic voting population to elect candidates of their choice. Thus, the changes before us would seem to meet the nonretrogressive effects test imposed by Section 5.

Under Section 5 of the Voting Rights Act, however, the submitting authority has the burden of showing that a submitted change has no discriminatory purpose as well as no discriminatory effect. See Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.52). In this regard, we note that the new method of election would not only include five single-member districts but two at-large positions which would be elected by place on a staggered basis, thereby effectively continuing for those two positions the same features which have characterized the existing system under which Hispanics have not been able to elect representatives of their

choice to office. Although the use of some at-large seats in such a plan is not unusual, the requirement in this proposal that the two at-large seats shall be elected on a staggered and designated place basis, inhibits the potential for effective minority participation and, thus far, has not been justified by any non-racial considerations. Thus, it would appear that the plan as a whole may have been calculated to limit the voting potential of Hispanic voters in the school district, and while this plan cannot be said to be retrogressive in effect, we are unable to draw the same conclusion with regard to the issue of racial purpose.

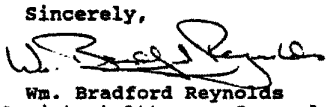
In light of these considerations, therefore, I cannot conclude, as I must under the Voting Rights Act, that the school district has sustained its burden with regard to purpose. Accordingly, on behalf of the Attorney General, I must object to the school district's change in the method of election and the districting plan insofar as they incorporate the use of designated positions and staggered terms for the two at-large seats.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that these changes have neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. In addition, Section 51.45 of the guidelines permits you to request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the effect of the objection by the Attorney General is to make the proposed districting plan legally unenforceable. 28 C.F.R. 51.10.

With regard to the realignment of voting precincts, the creation of five voting precincts and polling places therefor, and the implementation schedule, it is apparent that these changes were made to accommodate the districting plan. Since they are dependent upon the districting plan to which an objection is being interposed, the Attorney General is unable to make a final determination with respect to them at this time. 28 C.F.R. 51.22(b).

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action the Hondo Independent School District plans to take with respect to this matter. If you have any questions, feel free to call Sandra S. Coleman (202-724-6718), Director of the Section 5 Unit of the Voting Section.

Sincerely,



Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

April 18, 1988

David Ryan, Esq.
Henslee, Ryan & Grace
3432 Greystone Drive
Suite 200
Austin, Texas 78731

Dear Mr. Ryan:

This refers to the change in method of election from at large to four single-member districts and three at-large positions (without numbered positions), the districting plan, a majority vote requirement for trustees elected from districts, the implementation schedule, candidate qualifications, and the consolidation of seven polling places for the Marshall Independent School District in Harrison County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received the information to complete your submission on March 29, 1988.

We have considered carefully the information you provided, as well as information from other interested parties and from the 1980 Census. Our analysis of the 1980 Census data indicates that the minority population figures for the proposed districts provided in your submission mistakenly include a double-count of Hispanic residents. In addition, the figures furnished for each of the districts show that the black population totals include Hispanics and others, even though there is no indication that these other minority residents ally themselves with blacks in school board elections. Thus, it would appear that, from the standpoint of the black non-Hispanic population, the proposed plan contains but a single majority black district, and that one at only 54.9 percent black. This contrasts significantly with the 57 percent and 55.7 percent "minority" populations for two districts as set forth in the information provided with the submission.

In this regard, we find it particularly noteworthy that the black community apparently has been seeking for many years to have the school district adopt single-member districts. It appears that the school district resisted these efforts while, at the same time, blacks consistently were defeated in contested school board elections. In fact, during the course of these events the Attorney General found it necessary in 1976 to interpose an objection to the school board's effort to impose a

majority vote requirement which had the potential for making it even more difficult for blacks to elect candidates of their choice. Racially polarized voting appears to characterize school board elections in the Marshall Independent School District and the school district so stipulated during the course of this submission. Under such circumstances, then, a serious question is raised as to whether the submitted plan affords the black constituency an equal opportunity to participate in the electoral process and to elect candidates of their choice to office.

With respect to the consolidation of polling places, a similar concern is raised since it appears that such a consolidation would make it more difficult for many black voters to participate in school board elections. While we recognize that there is a valid interest in eliminating election day problems engendered by the school district and the city holding elections on the same day at different polling locations, it appears that the school district had available to it alternatives which would have been not nearly so restrictive on polling place accessibility as the one adopted. That choice is particularly troubling when it is noted that the consolidation does not resolve the problem of voters having to vote at more than one polling place on election day and that no input on this important matter was sought from the minority community.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has no discriminatory purpose or effect. See Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.39(e)). In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that that burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the change in the method of election as implemented by the instant districting plan, and to the polling place consolidation.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that these changes have neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. In addition, Section 51.45 of the guidelines permits you to request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the effect of the objection by the Attorney General is to make the change in method of election as implemented by the submitted districting plan and the consolidation of polling places legally unenforceable. 28 C.F.R. 51.10.

With regard to the candidate qualifications and the implementation schedule, we are unable to make a determination at this time since these changes are dependent upon the changes to which an objection is being interposed. See 28 C.F.R. 51.22(b).

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action Marshall Independent School District plans to take with respect to this matter. If you have any questions, feel free to call Mark A. Posner (202-724-8388), Deputy Director of the Section 5 Unit of the Voting Section.

Sincerely,

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

James P. Allison, Esq.
Allison & Associates
815 Brazos, Suite 204
Austin, Texas 78701

JUN 14 1988

Dear Mr. Allison:

This refers to the reduction in the number of justice of the peace and constable precincts, and the redistricting of such precincts in San Patricio County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C.1973c. We received the information to complete your submission on April 15, 1988. Although we noted your request for expedited consideration, we have been unable to respond until this time.

We have considered carefully the information you have provided, as well as comments and information received from other interested parties. At the outset, we note that almost half the county's population is Hispanic, and that the western and north-central portions of the county are predominantly Hispanic. Under the existing justice of the peace election system, four justice of the peace ("J.P.") districts are located in these predominantly Hispanic areas of the county while two such districts are located in the eastern portion of the county which is predominantly Anglo. Under the proposed system, the existing six districts would be reduced to four in that the four districts now existing in the predominantly Hispanic areas of the county would be consolidated into two districts. Thus, two justice of the peace positions (and two constable positions) would be eliminated and, given the pattern of polarized voting which appears to exist in the county, the opportunity presently enjoyed by Hispanics for electing candidates of their choice to the office of justice of the peace (and constable) would be significantly diminished, leading to a retrogression in their

ability to elect candidates of their choice to these offices. See Beer v. United States, 425 U.S. 130 (1976). We find this conclusion inescapable even though we recognize that the plan proposed for implementing this new districting concept is identical to the plan for the commissioners court which previously was granted Section 5 preclearance in a different context.

We have duly noted the county's explanation that these changes were adopted to equalize the workloads of the justices of the peace and to reduce the cost of operating the county's J.P. system. While these generally would appear to be appropriate concerns for the county to consider in evaluating the need for judicial-type offices of this nature, our information is that the commissioners made no comparative study of the workloads or the economic status of the J.P. offices before adopting the changes. As we understand it, they did not consult the J.P. reports (although such reports apparently were readily available) which would have informed them of the workload actually being handled by each justice and the revenue being returned to the county by each J.P. office. As a consequence, it appears that the proposed changes would in fact assign a substantial amount of additional work to the two J.P. offices (both located in the predominantly Hispanic area of the county) which already are the busiest while making no change with respect to the J.P. office (located in an Anglo majority district) which appears to have the least amount of work (and produces the smallest amount of revenue).

We also are not unmindful of the procedural concerns that attach to these changes. Thus, we understand that the commissioners at first sought to adopt these changes (at the July 13, 1987, meeting) without notifying or seeking any input from the affected justices of the peace or the affected communities. Indeed, the agenda notice for the July 13th meeting indicated only that minor changes were slated for adoption to realign the J.P. districts with election precinct boundaries (though no such change was proposed or needed for the J.P. districts located in the predominantly Hispanic portions of the county), and we understand that the county attorney subsequently advised that the agenda notice violated the Texas Open Meetings Act. One reason advanced at the meeting for approaching this issue in this manner was that the changes should be adopted promptly to avoid having members of the affected communities

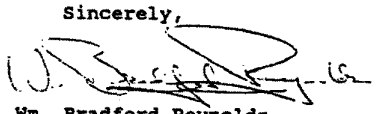
present to oppose them. When, after the July 13th meeting, Hispanic residents of the county did express strong opposition to the changes, this led simply to a pro forma reconsideration of the prior action with no change in result.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has no discriminatory purpose or effect. See Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.52(c)). In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that that burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the reduction in the number of justice of the peace and constable precincts and the districting plan adopted for its implementation.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that these changes have neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. In addition, Section 51.45 of the guidelines permits you to request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the effect of the objection by the Attorney General is to make the submitted changes legally unenforceable. 28 C.F.R. 51.10.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action San Patricio County plans to take with respect to this matter. If you have any questions, feel free to call Mark A. Posner (202-724-8388), Deputy Director of the Section 5 Unit of the Voting Section.

Sincerely,



Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

AUG 12 1988

Honorable Frank H. Lindsey, Jr.
Mayor
P. O. Box 1170
Jasper, Texas 75951

Dear Mayor Lindsey:

This refers to the annexation, reflected in Ordinance No. 3-88-1, to the City of Jasper in Jasper County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received the information to complete your submission on June 13, 1988.

We have considered carefully the information you have provided, information obtained from Census data, and information from other informed sources. At the outset, we note that the city elects its mayor and council at large by numbered posts. Analysis of election returns establishes that candidates who appear to have the support of black voters essentially have been unsuccessful in city elections and this result appears to be due, at least in part, to the existence of a pattern of racial bloc voting in the local electoral process. In this context, the proposed annexation, which will have the immediate effect of reducing the black population of the city by 2.3 percentage points (from 42.4 percent to 40.1 percent) is retrogressive and, if precleared, would dilute the position of black voters.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has no discriminatory purpose or effect. See Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.52). In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that that burden has been sustained in this instance. See City of Rome v. United States, 446 U.S. 156, 184 & n.19 (1980); City of Richmond v. United States, 422 U.S. 358, 370 (1975). Therefore, on behalf of the Attorney General, I must object to the proposed annexation.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that this change has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. In addition, Section 51.45 of the guidelines permits you to request that the Attorney General reconsider the objection and, in this regard, it should be noted that normally annexations of this nature may be found to meet Section 5 standards if the city's election system is modified in a way which fairly reflects minority voting strength in the expanded city. See, e.g., City of Richmond v. United States, supra, 422 U.S. at 370. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the effect of the objection by the Attorney General is to make the voting changes occasioned by the proposed annexation legally unenforceable. 28 C.F.R. 51.10.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action the City of Jasper plans to take with respect to this matter. If you have any questions, feel free to call Ms. Lora L. Tredway (202-724-8290), Attorney Reviewer in the Section 5 Unit of the Voting Section.

Sincerely,

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

September 26, 1988

Ann Clarke Snell, Esq.
Bickerstaff, Heath & Smiley
San Jacinto Center, Suite 1800
98 San Jacinto Boulevard
Austin, Texas 78701-4039

Dear Ms. Snell:

This refers to the reduction in the number of justice of the peace and constable precincts from five to one in Lynn County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received the information to complete your submission on July 26, 1988.

We have considered carefully the information you have provided, as well as information from other interested parties and from the Section 5 submissions of prior redistricting plans in 1982 and 1985 for justice of the peace ("JP") precincts in Lynn County. As you know, on November 18, 1985, the Attorney General interposed an objection to the county's proposal to reduce the number of JP precincts from five to two and the associated redistricting plan. In that letter, we noted what appeared to be a pattern of racially polarized voting in local elections and, in that context, the changes appeared to have a retrogressive effect on the opportunity of minority citizens to participate in the political process. We also noted that much of the information we had requested to enable us to reach a more informed decision had not been furnished and that some of that which had been provided was inconsistent with other information available to us. Finally, we shared with you our observation that the reduction in the number of JP precincts did not appear on its face to be objectionable, but that an objection was necessary in the context of the implementing districting plan which was retrogressive to minority voting strength in the county.

The county now proposes to adopt a single, countywide JP precinct. In so doing, the county has not sought to provide any of the information which we explained was lacking in the prior submission nor has the county clarified any of the inconsistencies which handicapped our prior review. However, on the basis of the information available to us it appears that the new plan will not only continue but increase the retrogression which led to the 1985 objection. Also, we find particularly relevant the fact that, as with the 1985 plan, minority citizens were not allowed the opportunity to participate in the process leading to the adoption of the present proposal.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has no discriminatory purpose or effect. See Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.52). In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that that burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the proposed reduction in the number of justice of the peace and constable precincts from five to one.

In interposing this objection we wish to reiterate that a reduction in the number of JP precincts, if implemented by a fairly drawn, nondiscriminatory districting plan, should encounter no difficulty satisfying Section 5 preclearance standards. In that regard, we note that the state constitution (art. 5, sec. 18) continues to provide Lynn County the authority "from time to time, for the convenience of the people, . . . [to] divide[the county] into not more than four precincts."

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the instant changes have neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. In addition, Section 51.45 of the guidelines permits you to request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the effect of the objection by the Attorney General is to make the proposed reduction legally unenforceable. 28 C.F.R. 51.10.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action the county plans to take with respect to this matter. If you have any questions, feel free to call Mark A. Posner (202-724-8388), an attorney in the Voting Section.

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

FEB 3RD 1989

Richard Collins, Esq.
Duckett, Bouligny, Collins, Clapp
& Collins
P. O. Box 829
El Campo, Texas 77437

Dear Mr. Collins:

This refers to the proposed imposition of numbered positions and a majority-vote requirement for the three at-large city council positions for the City of El Campo in Wharton County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your initial submission on December 5, 1988; supplemental information was received on December 19, 1988.

We have carefully considered the information you have submitted, as well as comments and information from other interested parties. Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has no discriminatory purpose or effect. See Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.52). As noted in our previous letter to the city, under Beer v. United States, 425 U.S. 130 (1976), the absence of such an effect is shown only when it is demonstrated that there has been no retrogression in the political strength already attained by minorities in the electoral system.

We note that, during the April 1988 city council election under the existing system with three at-large positions, but without numbered positions or a majority-vote requirement, minorities were able to elect candidates of their choice to two of the seven positions on the city council. One of those positions was in a predominantly minority district (District No. 2) where the minority candidate was unopposed, and the other was an at-large position where the minority candidate placed second in a field of five for the three at-large positions.

In comparison to the existing plan, the proposed changes, with the three at-large positions being elected from numbered positions and with a majority-vote requirement, appear to offer less opportunity for effective political participation by minority citizens. As was the case when we earlier objected to the incorporation of those features into the city's election system, in our view the use of numbered positions and a majority-vote requirement for the at-large positions would make it more difficult for minority citizens to elect candidates of their choice to these positions because it would eliminate the possibility of single-shot voting, a device which traditionally has been used by minorities to realize their voting potential in at-large election systems. Since the city has presented nothing to show that this is an unwarranted assessment, I am unable to conclude that the city has carried the burden imposed by Section 5. Accordingly, on behalf of the Attorney General, I must object to the use of numbered positions and a majority-vote requirement for the at-large positions.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that these changes have neither the purpose nor the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. In addition, Section 51.45 of the Section 5 guidelines permits you to request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the effect of the objection by the Attorney General is to make the use of numbered positions and a majority-vote requirement for the at-large positions legally unenforceable. 28 C.F.R. 51.10.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action the City of El Campo plans to take with respect to this matter. If you have any questions, feel free to call Sandra S. Coleman (202-724-6718), Deputy Chief of the Voting Section.

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General *Washington, D.C. 20530*

February 27, 1989

Mary Milford, Esq.
Law Offices of Earl Luna, P.C.
4411 Central Building
4411 N. Central Expressway
Dallas, Texas 75205

Dear Ms. Milford:

This refers to six branch absentee voting location changes, three additional absentee voting locations, and the implementation schedule for the November 8, 1988, general election for Dallas County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received the information to complete your submission on December 28, 1988, and February 8, 16, and 22, 1989.

We have reviewed carefully the information you have provided, as well as Census and other available statistical data and comments from other interested parties. At the outset, we note the very abbreviated schedule allowed by the county for our review under Section 5 of the changes presently before us. We initially received eight of the changes on September 9, 1988, just 60 days prior to the November 8, 1988, general election. Those changes were scheduled to be and, in fact, were implemented beginning October 14, which, in turn, was only 11 days after final adoption of the changes. The period for absentee voting by personal appearance ended November 4, 1988. The remaining two changes at issue were not adopted until October 31, and we received that submission on November 3, 1988, two days after the county implemented the additional changes and the day before such absentee voting was to end.

During the course of our review, our staff orally informed county officials that the proposed changes were legally unenforceable absent the requisite Section 5 preclearance and that there was substantial concern that the proposed changes would discriminate against minority voters. Thus, it appears that although the county was well aware of the Section 5 preclearance requirements, it took no steps to ensure that its decisions could be adequately reviewed prior to implementation. The county apparently intended to, and, in fact, did proceed with these changes without obtaining the requisite Section 5 preclearance.

The November 1988 election was the first general and Presidential election conducted under the Texas law that eliminates most restrictions on absentee voting by personal appearance. Thus, any person who was eligible to vote on November 8, 1988, was also eligible to vote by personal appearance during the absentee voting period from October 19 through November 4, 1988. Under precleared state law, there is no limit on either the number or the location of branch absentee voting sites that the county may establish for absentee voting by personal appearance. We note, as well, that Anglo and minority (both black and Hispanic) residents of Dallas County are not similarly situated socio-economically, since blacks and Hispanics lag significantly behind Anglos in income, education, occupational status and electoral participation.

These factors are of particular relevance here, in that when the county evaluated its absentee voting locations for the November 8, 1988, general election, the five then existing branch absentee voting locations which were retained were all in predominantly Anglo areas. Furthermore, in moving the remaining branch absentee voting locations, the county relocated each site to a predominantly Anglo area, including the Lancaster Library site, which is relocated from the Cummings Recreational Center location in a predominantly minority area. The county commissioners court also approved two additional absentee voting locations, each in a predominantly Anglo area. These actions occurred subsequent to requests by persons representing the minority communities for absentee voting locations in areas with highly concentrated black and Hispanic populations.

Only after what appears to have been significant pressure from the black community did Dallas County agree to place an absentee voting site in a location convenient to some blacks. Even so, the establishment of that site, the Martin Luther King Jr. Recreational Center, as an absentee voting polling place (a choice that has received Section 5 preclearance) appears to have been contingent on the establishment of yet another absentee voting location in another predominantly Anglo area (Lake Highlands). Moreover, notwithstanding that there were fewer than five days remaining in the absentee voting period and that the county elections department was prepared to open the Martin Luther King Jr. Center site immediately upon its approval

as an absentee polling place, the county nevertheless delayed opening that absentee voting site until after the occurrence of an event which, as the county was fully aware, would have provided many black voters with a convenient opportunity to vote absentee by personal appearance at the Martin Luther King Jr. Center site.

Based on the information you have provided, it appears that the county also relied on past absentee voter turnout, which it avers has been low in minority communities, and current registration strength in adopting the proposed changes in its absentee voting program. Past absentee turnout at these locations is an unreliable measure for the general election since only non-countywide and special elections had been conducted under the state's unrestricted absentee eligibility law prior to November 8, 1988. Furthermore, it appears that past low levels of absentee voting by minority citizens may be attributable in part at least to the lack of convenient absentee polling places and stricter eligibility requirements at earlier elections. With regard to the criterion of registration strength, the available information indicates that within five geographical areas of the 24th Congressional District, the predominantly minority area of East Oak Cliff/West Dallas had 76,349 registered voters, but was not served by any convenient absentee voting location, while each of the other four areas, which is predominantly Anglo, had significantly fewer registered voters, but was served by an absentee voting location.

Finally, it should be pointed out that we had previously expressed concern about the legal propriety of these criteria. When the county used very similar criteria to establish its ballot allocation formula for the November 1982 general election, our investigation of complaints led us to advise the county that operation of the formula had had a disparate effect on minority voters by precluding many minority citizens from voting. We advised the county that continued use of the formula would, in our view, clearly violate Section 2 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973.

While we recognize that the state's revised absentee voting law greatly expands the opportunity for registered voters to exercise their franchise, county officials have the responsibility of ensuring that this expanded opportunity is provided equally to all electors in Dallas County. The county's timetable for and delay in addressing the implementation of the new state law for the 1988 general election necessarily precluded an adequate preimplementation opportunity for the Attorney General to review the voting changes that the county

proposed under the new law. However, information we have received on the absentee voting results from the proposed voting locations for the 1988 election lend significant support to the concerns that have been raised about the failure of the absentee voting program to provide black and Hispanic voters an opportunity equal to that of Anglo voters to cast absentee ballots under the new expansive Texas procedure.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that the submitted changes have no discriminatory purpose or effect. See Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.52(c)). In light of the circumstances discussed above, I cannot conclude, as I must under the Voting Rights Act, that that burden has been sustained in this instance. The program for absentee voting by personal appearance operated by Dallas County for the 1988 general election cannot be precleared under Section 5 at this time nor, in view of the circumstances involved here, could it have been even had it been timely submitted prior to its implementation on October 14 and November 1, 1988. Therefore, on behalf of the Attorney General, I must object to the six branch absentee voting location changes, the three additional branch absentee voting locations, and the implementation schedule therefor, to the extent that it delayed absentee voting at the Martin Luther King Jr. Recreational Center until November 1, 1988.

In addition to interposing an objection to the use in the 1988 election or in any future election of the proposed system, we feel a responsibility to advise the county of its duty in the future to obtain Section 5 preclearance prior to implementation of changes of this nature and that, in light of this experience, we will feel constrained to interpose an objection to, and seek court enforcement as needed to prevent, future implementation of any untimely submitted changes in the absentee voting program. In that regard, we are studying the circumstances to determine if it will be necessary or appropriate to seek a court-ordered remedy as to the 1988 actions.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that these changes have neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. In addition, Section 51.45 of the

guidelines permits you to request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the effect of the objection by the Attorney General is to make the changes legally unenforceable. 28 C.F.R. 51.10.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action Dallas County plans to take with respect to these matters. If you have any questions, feel free to call Ms. Lora L. Tredway (202-724-8290), Attorney-Reviewer in the Voting Section.

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

cc: Mr. Bruce R. Sherbet
Dallas County Elections Administrator

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

March 20, 1989

Randall Strong, Esq.
City Attorney
P.O. Box 424
Baytown, Texas 77522

Dear Mr. Strong:

This refers to the change in the method of electing the city council from voting at large (with residency districts) to election of five members from single-member districts and four (including the mayor) at large, the districting plan, the increase in the number of councilmembers from seven to nine, the provision that the three at-large members other than the mayor will be elected from numbered positions to staggered terms, the implementation schedule, the elimination of eleven polling places, and the realignment of voting precincts for the City of Baytown in Chambers and Harris Counties, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received the information to complete your submission on March 3, 1989.

We have considered carefully the information you have provided, comments and information received from other interested parties, and the opinions of the district court and the court of appeals in Campos v. City of Baytown, Texas, C.A. No. H-85-1021 (S.D. Tex. Jan. 5 and March 25, 1987), vacated and remanded, 840 F.2d 1240, reh'g denied, 849 F.2d 943 (5th Cir. 1988).

The district court ruled, and the court of appeals affirmed, that the city's at-large method of election violates Section 2 of the Voting Rights Act. In response to these rulings, the city now proposes the mixed method of election outlined above for an expanded nine-member city council. Our analysis of the opportunity that this plan provides minority citizens to participate in the political process and elect candidates of their choice is guided by the district court's findings of fact (also affirmed by the appellate

court), including the determination that black and Hispanic city residents are politically cohesive and that white persons vote sufficiently as a bloc to defeat the minorities' preferred candidates.

It appears that the proposed plan will permit minority citizens, who constitute one-fourth of the city's population, the opportunity to elect only one of nine city councilmembers, the representative from the majority-minority single-member district. This result flows primarily from the manner in which at-large positions were included in the proposed plan: they offer minority voters no more realistic opportunity to elect a candidate of their choice than do the at-large positions in the existing system.

Although the city was required to develop a new method of electing city councilmembers to remedy the violation that adheres to the existing at-large election system, the system proposed by the city would continue to elect nearly half of the city council by the at-large method which has been found by the courts to discriminate against minority persons. We particularly note that the city chose to impose anti-single-shot provisions on the proposed at-large seats, thus eliminating the electoral opportunity minorities otherwise would have to elect a person of their choice to these seats through the technique of single-shot voting. In addition, we note that a majority vote requirement was retained for these seats though opposed by minority residents.

During the process leading to the adoption and submission of this plan for Section 5 review, the city developed several alternative plans and minority representatives also put forth several alternatives, including alternatives for single-member district plans and combinations of single-member districts with one or more at-large seats. It appears that from among these alternatives the city chose the election plan that offers minority voters the least opportunity to participate in city council elections and elect candidates of their choice.

Moreover, we have not been provided any nonracial reasons for the city's inflexible adherence to the proposed plan. We understand that the city may wish to retain some at-large representation on the city council, but this does not explain the restrictions that have been placed on voting for the at-large seats in the proposed plan. For example, the numbered positions are not now used, and a system of staggered terms for all councilmembers could be retained while providing that the terms of the councilmembers occupying the at-large seats run concurrently.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. See

Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.52). In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that the burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the proposed method of election and the districting plan. Because the precinct and polling place changes are directly related to the election method change, we will make no determination on these matters at this time.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that these changes will have neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. In addition, Section 51.45 of the guidelines permits you to request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia court is obtained, the effect of the objection by the Attorney General is to make the proposed method of election legally unenforceable.

Since this matter is pending before the United States District Court for the Southern District of Texas in Campos v. City of Baytown, Texas, we are providing a copy of this letter to the Court.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action the City of Baytown plans to take with respect to this matter. If you have any questions, feel free to call Mark A. Posner (202-724-8388), an attorney in the Voting Section.

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

May 8, 1989

Dr. Ben Colwell
Superintendent, Refugio Independent
School District
P. O. Drawer 190
Refugio, Texas 78377

Dear Dr. Colwell:

This refers to the change in method of election from seven trustees elected at large (with numbered posts and plurality win) to five single-member districts and two at-large positions (plurality win), the districting plan, an implementation schedule which includes staggered terms for the two at-large seats, an annexation, and the selection of two polling places for the Refugio Independent School District in Refugio County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received the information to complete your submissions on March 7, 1989.

The Attorney General does not interpose any objection to the annexation. However, we feel a responsibility to point out that Section 5 of the Voting Rights Act expressly provides that the failure of the Attorney General to object does not bar any subsequent judicial action to enjoin the enforcement of such change. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41).

With regard to the remaining changes, we have given careful consideration to the materials you have provided, as well as information and comments from other interested parties. At the outset, we note that while the change in the method of electing the city council will provide minority voters with a greater opportunity to participate in the political process than under the current method, some of the information you have provided has been conflicting, and important elements of this

information remain incomplete. For example, your submission includes population by race and ethnicity on a block-by-block basis for some areas of the city, while for other areas the figures are essentially estimates, the reliability of which is open to serious question. It has been alleged, and the information available to us tends to confirm, that the proposed districting plan overconcentrates or "packs" minority voters into District 1, while a significant proportion of the remaining minority population is divided between Districts 3 and 4. In view of the apparent pattern of polarized voting in school district elections, it appears that this packing and fragmentation of the minority community denies Hispanic and black voters an equal opportunity to participate in the political process and elect candidates of their choice to office.

Our review also has revealed information to support the allegation that the mixed "5-2" system of district and at-large seats was selected over the seven single-member district system preferred by minority citizens so as to avoid the potential for fair minority representation in three majority-minority districts. In addition, the selection of staggered terms for the at-large seats would preclude minority voters from using the election device of single-shot voting and thus further limits the opportunity of minority voters to participate in the political process. Finally, we note that the polling places appear to have been chosen to benefit the white community and disadvantage minority voters, many of whom live a great distance from the proposed polling sites. We have received no adequate nonracial explanation for these decisions which appear to be the product of a decisionmaking process in which minority citizens did not have the opportunity to effectively participate.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. See Georgia v. United States, 411 U.S. 526 (1973); see also 28 C.F.R. 51.52. In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that the burden of showing the absence of a proscribed purpose has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the submitted changes, with the exception of the annexation, as noted above.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that these changes have neither the purpose nor will have the effect

of denying or abridging the right to vote on account of race, color, or membership in a language minority group. In addition, Section 51.45 of the guidelines permits you to request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the effect of the objection by the Attorney General is to make the submitted changes legally unenforceable. 28 C.F.R. 51.10.

Lastly, we note that the school district has yet to seek review under Section 5 of its bilingual procedures though we requested that the district seek Section 5 clearance over five months ago, in our November 28, 1988, letter to you. We understand that the district is in the process of gathering the information necessary to make a Section 5 submission and, in view of the time that has passed, we would expect that such a submission should be forthcoming immediately. We would be happy to provide whatever assistance would be appropriate in this regard.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action the Refugio Independent School District plans to take with respect to this matter. If you have any questions, feel free to call Sandra S. Coleman (202-724-6718), Deputy Chief of the Voting Section.

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

October 27, 1989

Richard D. Cullen, Esq.
Cullen, Carsner, Seerden & Cullen
P. O. Box 2938
Victoria, Texas 77902

Dear Mr. Cullen:

This refers to the 1977 charter revisions, which provide for an increase in compensation for the mayor and councilmembers; the change in the method of election from five at large, with numbered posts and majority vote, to four single-member districts and three at large, all by plurality vote for regular two-year terms; the districting plan; the increase in the number of councilmembers from five to seven; the provision that the two nonmayoral at-large members will be elected for concurrent terms; the implementation schedule, including the temporary increase in the term of mayor and a change in staggering of terms from 3-2 to 4-3; the elimination of numbered posts and the related change in ballot format; a polling place change; a precinct realignment and the establishment of an additional precinct and the polling place therefor; the candidate qualification residency requirement; and the repeal of the candidate qualification requirement in Article III, Section 3.02(a)(3) of the charter, for the City of Cuero in DeWitt County, Texas, submitted to the Attorney General on January 30, 1989, pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received the information to complete your submission on August 28, 1989.

The Attorney General does not interpose any objections to the 1977 charter amendments, the polling place change, the precinct realignment, the establishment of an additional precinct and a polling place therefor, and the repeal of the candidate qualification requirement in Article III, Section 3.02(a)(3) of the city charter. However, we feel a responsibility to point out that Section 5 of the Voting Rights Act expressly provides that the failure of the Attorney General to object does not bar any subsequent judicial action to enjoin the enforcement of such changes. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41).

cc: Public File

With regard to the remaining changes, we have considered carefully the information and materials you have supplied, along with information from other interested parties and the Bureau of the Census. At the outset, we note that even though minority residents constitute 47 percent of the city's total population, no minority member presently is among those elected to the council and at no time in the past has the city council included more than one minority member, circumstances that appear to be due largely to the combination of the existing at-large structure with a pattern of racially polarized voting in municipal elections. We further note that the process leading to adoption of the proposed changes was the result of litigation by minority citizens challenging the city's existing at-large election system under Section 2 of the Voting Rights Act and that those plaintiffs are strongly opposed to the manner in which the new council is to be elected, including the use of any at-large positions other than the mayor.

We see no basis for interposing an objection to the proposed use of two at-large seats in the new council. The features most often associated with minimizing minority representation -- numbered posts and majority vote -- have been eliminated. However, we cannot reach a similar conclusion with respect to the districts selected for the new plan. According to our information, a last minute change was made to modify the districts to place a white incumbent in one of the predominately minority districts. This change reduced the minority proportion in this district from 65.2 to 60.7 percent. The modification of districts solely to protect the interests of a white incumbent raises serious questions under the Act. See Ketchum v. Byrne, 740 F.2d 1398, 1408 (7th Cir. 1984).

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has no discriminatory purpose or effect. See Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.52(c)). In satisfying its burden, the submitting authority must demonstrate that the proposed changes are not tainted, even in part, by an invidious racial purpose; it is insufficient simply to establish that there are some legitimate, nondiscriminatory reasons for the voting changes. See Village of Arlington Heights v. Metropolitan Housing Development Corp., 429 U.S. 252, 265-66 (1977); City of Rome v. United States, 422 U.S. 156, 172 (1980); Busbee v. Smith, 549 F. Supp. 494, 516-17 (D.D.C. 1982), aff'd 459 U.S. 1166 (1983). In light of the circumstances discussed above, I cannot conclude, as I must under the Voting Rights Act, that the city has sustained its burden in this instance. Therefore, on behalf of the Attorney General, I must object to the districting plan proposed by the City of Cuero for implementing its proposed 4-2-1 election method.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that these changes have neither the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. In addition, Section 51.45 of the guidelines permits you to request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgement from the District of Columbia Court is obtained, the method of election changes and districting plan remain legally unenforceable. 28 C.F.R. 51.10.

Because the proposed implementation schedule has been established to implement the objected-to changes, the Attorney General is unable to make a determination with regard to it. See 28 C.F.R. 51.35.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action the City of Cuero plans to take with respect to these matters. If you have any questions, feel free to call Ms. Lora Tredway (202-724-8290), an attorney in the Voting Section.

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General *Washington, D.C. 20530*

FEB 5 1990

Jerry W. Corbin, Esq.
City Attorney
P. O. Drawer 1388
Denver City, Texas 79323

Dear Mr. Corbin:

This refers to the adoption of numbered positions and a majority vote requirement for the city council of Denver City in Yoakum County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received the information to complete your submission on December 8, 1989.

We have considered carefully the information you have provided as well as comments from other interested parties. Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. See Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.52). In this regard, we note that it is well recognized that where a jurisdiction has a significant minority population and a pattern of polarized voting exists, the addition of numbered positions and a majority vote requirement to an at-large election system may limit the opportunity of minority citizens to elect candidates of their choice to office. See, e.g., City of Rome v. United States, 446 U.S. 156, 183-185 (1980). Both numbered positions and the majority vote requirement serve to generate head-to-head election contests and, thus, where elections are characterized by voting along racial or ethnic lines, they act, especially in combination, to preclude minority voters from utilizing the election device of single-shot voting.

Here, the city proposes to add numbered positions and a majority vote requirement to an at-large method of election under which no Hispanic ever has been elected to city office through the use of single-shot voting or otherwise. While we recognize that Hispanics appear not to have actively participated to any

significant extent in the political process in the past, we also find in the information available to us significant indications that these changes will make it unlikely that Hispanics will succeed in future elections even though they may become more active politically. This serves to deprive Hispanics of a potential they presently possess.

Under these circumstances, then, we cannot say that the city has sustained its burden of showing that the changes will not "lead to a retrogression in the position of ... minorities with respect to their effective exercise of the electoral franchise" (Beer v. United States, 425 U.S. 130, 141 (1976)) and, thus, have no discriminatory effect. Accordingly, on behalf of the Attorney General, I must object to the adoption of numbered positions and a majority vote requirement for councilmanic elections in Denver City.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that these changes have neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. In addition, Section 51.45 of the guidelines permits you to request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the submitted changes continue to be legally unenforceable. 28 C.F.R. 51.10.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action Denver City plans to take with respect to this matter. If you have any questions, feel free to call Mark A. Posner (202-724-8388), an attorney in the Voting Section.

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

FEB 12 1990

Ms. Pam Rhodes
Chairperson, Board of Directors
Nolan County Hospital District
200 Arizona Street
Sweetwater, Texas 79556

Dear Ms. Rhodes:

This refers to Senate Bill No. 315 (1989), which provides for the creation of the Nolan County Hospital District with a seven-member board of directors with four elected from single-member districts and three elected at large; numbered positions for the at-large members; a districting plan; two-year, staggered terms; a plurality vote requirement; the election date; the implementation schedule; the candidacy requirements; and the procedures for filling vacancies for the district in Nolan County, Texas, submitted to the Attorney General on April 25, 1989, pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received the information to complete your submission on December 12, 1989.

We have considered carefully all of the information and materials you have supplied, along with information from other interested parties and the Bureau of the Census. As a result, the Attorney General does not interpose any objection to Senate Bill No. 315 insofar as it creates the Nolan County Hospital District. However, we feel a responsibility to point out that Section 5 of the Voting Rights Act expressly provides that the failure of the Attorney General to object does not bar any subsequent judicial action to enjoin the enforcement of such change. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41).

With regard to the remaining changes effected by Senate Bill No. 315, we cannot reach a similar conclusion. At the outset, we note that no minority candidate within Nolan County has won a contested election for office under an at-large system featuring numbered positions, a circumstance that appears to be due largely to the combination of the at-large electoral structures with a pattern of racially polarized voting in Nolan County elections. Indeed, it appears that even though minority candidates historically have had the support of minority voters, they have not achieved electoral success in any of the local governing bodies in Nolan County until after a change from an at-large method of election to an election system featuring single-member districts and a districting plan that provides for a significant majority of minority voters in a particular district.

Moreover, it appears that minority population in the hospital district is concentrated in such a manner that easily discernible districting alternatives would result in a plan that provides minority voters with a realistic opportunity to elect a candidate of their choice to the hospital board, an opportunity that the election system contained in Senate Bill No. 315 does not provide. In this regard, it is of particular note that the system contained in Senate Bill No. 315 not only incorporates the county commissioner election precincts, which themselves have been ineffective in affording minority voters a fair opportunity to elect candidates of their choice, but also superimposes upon its at-large positions features, such as numbered posts and staggered terms, which have been recognized as detrimental to minority voting strength where, as in Nolan County, a pattern of racial bloc voting exists.

Furthermore, the proposed method of election for the hospital board appears to have been adopted with virtually no input from the minority community. The question of what method should be used to elect the seven members of the hospital board arose subsequent to protests by minority citizens which led to the abandonment of the at-large election systems by the City of Sweetwater and the Sweetwater Independent School District, both of which are entities containing a major part of the hospital district's constituency. In addition, the proposed method of election was adopted at a time when persons active in the political process in Nolan County were aware that the at-large method of election, with numbered posts and staggered terms, was opposed by minority citizens because, in the context of Nolan County, it operated as a device to minimize or cancel out minority voting strength.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has no discriminatory purpose or effect. See Georgia v. United States, 411 U.S. 526 (1973); see also 28 C.F.R. 51.52(c). In

satisfying its burden, the submitting authority must demonstrate that the proposed change is not tainted, even in part, by an invidious racial purpose; it is insufficient simply to establish that there are some legitimate, nondiscriminatory reasons for the voting changes. See Village of Arlington Heights v. Metropolitan Housing Development Corp., 429 U.S. 252, 265-66 (1977); City of Rome v. United States, 422 U.S. 156, 172 (1980); Busbee v. Smith, 549 F. Supp. 494, 516-17 (D.D.C. 1982), aff'd, 459 U.S. 1166 (1983). In addition, a submitted change may not be precleared if its implementation would lead to a violation of Section 2 of the Voting Rights Act, 42 U.S.C. 1973, because minority voters have less opportunity than do white voters to elect candidates of their choice. See 28 C.F.R. 51.55(b). In light of these considerations, I cannot conclude, as I must under the Voting Rights Act, that the county has sustained its burden in this instance. Therefore, on behalf of the Attorney General, I must object to the proposed method of election and districting plan for the hospital district's board of directors contained in Senate Bill No. 315.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that these changes have neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or language minority. In addition, Section 51.45 of the guidelines permits you to request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the proposed new method of election changes and districting plan continue to be legally unenforceable. 28 C.F.R. 51.10.

Finally, the election date, the implementation schedule, the candidacy requirements, and the procedures for filling vacancies can be implemented only in the context of the method of election changes and districting plan to which an objection is interposed herein. Accordingly, the Attorney General is unable to make a determination regarding these directly related changes at this time. See also 28 C.F.R. 51.22(b).

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action that the Nolan County Hospital District plans to take with

respect to these matters. If you have any questions, feel free to call Ms. Lora Tredway (202-724-8290), an attorney in the Voting Section.

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

April 30, 1990

Richard C. Hile, Esq.
Tonahill, Hile, Leister
& Jacobellis
P. O. Box 670
Jasper, Texas 75951

Dear Mr. Hile:

This refers to your request that the Attorney General reconsider the August 12, 1988, objection under Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c, to the annexation (Ordinance No. 3-88-1) to the City of Jasper in Jasper County, Texas. We received your letter on January 24, 1990; supplemental information was received on February 27, 1990.

In our August 12, 1988, objection letter we identified the considerations underlying our objection to the proposed annexation. We noted our concerns about the immediate reduction of 2.3 percentage points in the city's black population and the resulting dilution of the position of black voters in the context of the city's at-large election method and evidence of racial bloc voting.

We have considered carefully the information in your letters and your submittal of a report of the Deep East Texas Council of Governments (DETCOG) special population survey of Jasper. Your request for reconsideration claims that these new data show that the proposed annexation will result in no diminution in minority voting strength.

According to the special DETCOG survey, the city's 1988 base population (not including the annexed area) is 7,296, of whom 3,079 (42.2%) are black. The annexed area has a population of 865, of whom 191 are black. Inclusion of the annexed area into the 1988 survey count results in a total population of 8,161, of whom 3,270 (40.1%) are black. Thus, on the basis of

cc: Public File

the city's new figures, the proposed annexation results in a black population reduction of 2.1 percentage points (from 42.2% to 40.1%). Therefore, it appears that the new statistical data submitted for reconsideration support our initial conclusions, and, on behalf of the Attorney General, I must decline to withdraw the objection to the annexation.

Of course, Section 5 permits you to seek a declaratory judgment from the United States District Court for the District of Columbia that this change has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group, irrespective of whether the change previously has been submitted to the Attorney General. As previously noted, until such a judgment is rendered by that court, the legal effect of the objection by the Attorney General is that the change in question remains legally unenforceable. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.10).

Furthermore, as mentioned in our August 12, 1988, letter, the Attorney General would consider withdrawing his objection if the city's election method is modified in a way which fairly reflects minority voting strength in the expanded city. See City of Richmond v. United States, 422 U.S. 358, 370 (1975); see also 28 C.F.R. 51.61(c)(3).

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action the City of Jasper plans to take with respect to this matter. If you have any questions, feel free to call Lora L. Tredway (202-724-8290), an attorney in the Voting Section. Refer to File No. T7878 in any response to this letter so that your correspondence will be channeled properly.

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

MAY 7 1990

Stan Reid, Esq.
Allison & Associates
208 W. 14th Street
Austin, Texas 78701

Dear Mr. Reid:

This refers to the June 26, 1980, transfer of registration duties from the county tax assessor/collector to the county clerk, and the September 26, 1987, transfer of registration duties from the county clerk to the county tax assessor/collector for San Patricio County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received the information to complete your submission on March 6, 1990.

The Attorney General does not interpose any objection to the 1980 transfer of registration duties from the county tax assessor/collector to the county clerk. However, we feel a responsibility to point out that Section 5 of the Voting Rights Act expressly provides that the failure of the Attorney General to object does not bar any subsequent judicial action to enjoin the enforcement of such change. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41).

With regard to the 1987 action returning registration duties to the county tax assessor/collector, we have given careful consideration to the reasons advanced in support of the transfer, as well as the sequence of events leading to the commissioners court's decision to adopt the 1987 transfer of registration duties. The purposes of the transfer were said to be to correct the failure to submit the prior change for Section 5 review, to save the county money and to place the responsibility in more capable hands. The information available to us does not confirm such purposes. Rather, the record seems to establish that this transfer was directly in response to actions taken by the incumbent county clerk to assist this Department in carrying out its responsibilities under Section 5 in the review of the proposed consolidation of justice of the peace precincts, to which an objection was interposed on June 14, 1988.

Under the Procedures for the Administration of Section 5, 28 C.F.R. 51.55, the Attorney General is to consider submissions in light of "constitutional and statutory provisions designed to safeguard the right to vote from denial or abridgement on account of race, color or membership in a language minority group." If, as seems to be the case, the responsibility for voter registration was removed from the county clerk in reprisal for that person's assistance to this office in its statutory responsibility to enforce the Voting Rights Act, it is not entitled to receive Section 5 preclearance.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. See Georgia v. United States, 411 U.S. 526 (1973); see also 28 C.F.R. 51.52. In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that the 1987 transfer of registration duties from the county clerk to the county tax assessor/collector meets these preclearance standards. Therefore, on behalf of the Attorney General, I must object to the 1987 transfer of registration duties from the county clerk to the county tax assessor/collector.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that this change has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color or membership in a language minority group. In addition, Section 51.45 of the guidelines permits you to request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the unprecleared change continues to be legally unenforceable. 28 C.F.R. 51.10.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action San Patricio County plans to take with respect to this matter. If you have any questions, feel free to call Sandra S. Coleman (202) 724-6718, Deputy Chief of our Voting Section.

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

NOV 5 1990

Mr. Tom Harrison
Special Assistant for Elections
Elections Division
P. O. Box 12060
Austin, Texas 12060

Dear Mr. Harrison:

This refers to Chapter 632, S.B. No. 1379 (1989), which provides for the creation of fifteen additional judicial districts and the implementation schedule for the State of Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your submission on October 2, 1990.

We have given careful consideration to the information in your submission, including all information contained in your earlier submission of Chapter 632, which was withdrawn by the state pending a decision by the court en banc in League of United Latin American Citizens v. Clements, No. 90-8014 (5th Cir. Sept. 28, 1990) and we have considered the information in that opinion, as well as prior court opinions in that case. In addition, we have considered information from the Census, along with comments and information from other sources.

The changes consist of the establishment of fifteen additional district court judgeships, denominated as separate Judicial Districts. Each judgeship is elected at large in the area of the court's jurisdiction, which consists of one or more counties. Each judgeship is subject to the general requirement in Texas law that nomination for such position requires the obtaining of a majority of the vote in a political primary. Thirteen of these judgeships will have the same geographic jurisdiction as previously existing judgeships. In these cases, the election of judgeships by Judicial District operates as a numbered post requirement, eliminating any possibility of effective single-shot voting.

Our review of the history of the numbered post feature in Texas elections indicates that its adoption and continued maintenance over the years appears calculated to place an additional limitation on the ability of minority voters to participate equally in the political process and elect candidates of their choice. In that regard, we note that it is commonly understood that numbered posts along with other features such as the use of a majority-vote requirement in the context of an at-large election system, have had a discriminatory impact on racial and ethnic minorities in those areas where minorities are a significant percentage of the population. Numerous federal court decisions have chronicled instances where these features have been adopted in Texas for clearly discriminatory motives, and where their use has produced the intended discriminatory effects. In addition, review of our records shows that the Attorney General has had to interpose objection under Section 5 on forty-one occasions to the adoption of numbered posts and on twenty-six occasions to the adoption of a majority-vote requirement by various Texas jurisdictions.

A review of more recent materials shows that it is commonly understood among Texas legislators that the discriminatory impact of these features is present in the election of judges. Indeed, the legislative session which produced Chapter 632 (1989) included an address by the Chief Justice of the Texas Supreme Court and legislative committee discussions in which the discriminatory impact of these features was acknowledged. It appears that the proposed method of electing the judicial positions presently before us, which incorporates the very features understood to be discriminatory, took the form it did primarily because of the inability of legislators to reach a consensus regarding an alternative method of selecting judges that would be fair to racial and ethnic minorities.

Accordingly, with regard to the additional judgeships in Dallas, Lubbock, and Tarrant Counties in particular, the evidence clearly indicates that the at-large method of election, even considered in isolation from the numbered post and majority-vote features, produces a discriminatory result proscribed under Section 2 of the Voting Rights Act, 42 U.S.C. 1973c.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. See Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.52). In addition, our guidelines provide that a submitted change may not be precleared if its implementation would lead to a clear violation of Section 2 of the Act. See 28 C.F.R. 51.55. Because we cannot conclude, as we must under the Voting Rights Act, that your burden has been sustained in this instance, and because our view is that use of the at-large election sytem with numbered

posts and majority vote results in a clear violation of Section 2, I must, on behalf of the Attorney General, interpose an objection to the voting changes occasioned by Chapter 632, S.B. No. 1379 (1989) and the implementation schedule for those districts.

In reaching this decision, we are not unmindful of the recent decision of the Fifth Circuit Court of Appeals in League of United Latin American Citizens v. Clements, No. 90-8014 (Sept. 28, 1990) ("LULAC") (en banc) which held that the Section 2 results standard is not applicable to judicial elections. The LULAC court, however, expressly recognized that "Section 5 of the Act applies to state judicial elections" (Slip. op. at 20) and until this matter is clarified further by the courts we see no basis for altering our Section 5 procedural requirements insofar as they relate to Section 2.

We note that under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed changes have neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. In addition, you may request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the changes to which we have objected continue to be legally unenforceable and should not be implemented in the November 6, 1990, election. Clark v. Roemer, No. A-327 (U.S. Nov. 2, 1990) (copy attached). See also 28 C.F.R. 51.10 and 51.45.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the State of Texas plans to take concerning this matter. If you have any questions, you should call George Schneider (202-514-8696), Attorney in the Voting Section.

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

November 13, 1990

Robert C. Story, Esq.
City Attorney
128 East 4th Street
Freeport, Texas 77541

Dear Mr. Story:

This refers to the imposition of a majority vote requirement for the election of mayor and councilmember for the City of Freeport in Brazoria County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received the information necessary to complete your submission on September 11, 1990.

We have given careful consideration to the information in your submission as well as information from the Census and other sources. We note that the City of Freeport has a population, according to the 1980 Census, that is 13.1 percent black and 27.2 percent Hispanic. In combination, these minority groups comprise 40 percent of the city's population, yet it appears that only one black and only one Hispanic have ever been elected to city office.

The current method of electing the city council is at large with numbered posts. Where voting is racially polarized, this election method is commonly understood to place a significant limitation on the ability of racial and ethnic minorities to participate equally in the political process and elect candidates of their choice. From our review of election returns in Freeport, it appears that racial bloc voting does occur in the city to a significant degree. In this context, the imposition of a majority-vote requirement clearly will operate as an added obstacle to the potential for minority voters to elect candidates of their choice to city government in Freeport. Indeed, earlier this year an Hispanic candidate became the first Hispanic to be elected to the Freeport City Council by receiving a slim plurality of the vote in a contest against several Anglo candidates. The ability of minority voters to elect their preferred candidate under such circumstances would be

significantly diminished if a majority vote is required for election.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.52). In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that your burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the majority vote requirement for city offices.

We note that under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed change has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. See 28 C.F.R. 51.44. In addition, you may request that the Attorney General reconsider the objection. See 28 C.F.R. 51.45. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the majority vote requirement continues to be legally unenforceable. See 28 C.F.R. 51.10.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the City of Freeport plans to take concerning this matter. If you have any questions, you should call George Schneider (202-514-8696), an attorney in the Voting Section.

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

NOV 20 1990

Mr. Tom Harrison
Special Assistant for Elections
Elections Division
P. O. Box 12060
Austin, Texas 78711-2060

Dear Mr. Harrison:

This refers to our letter of November 5, 1990, in which the Attorney General interposed an objection under Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c, to Chapter 632, S.B. No. 1379 (1989), which provides for the creation of fifteen additional elected judgeships and the implementation schedule for the State of Texas. Since that time it has come to our attention that our determination in that regard may need clarification so that state authorities will have a clearer basis upon which to conform their actions to the requirements of Section 5.

As you know, Chapter 632 created or authorized the creation of fifteen judgeships in ten of the distinct geographical districts used for the election of judges in Texas. The Attorney General's determination was made with respect to the statute as a whole but focused on certain elements of the electoral scheme which raised the concerns which led to our interposing the objection. Of course, our findings with respect to the purpose and effect of a particular voting feature well may vary depending on the demographic and historical context in which the features's implementation relative to given positions must be viewed. Thus, our consideration of each of the new judgeships contained in Chapter 632 in the light of these factors and in the context of existing racially polarized voting, along with the use of designated post and majority vote features, led us to conclude that the state had not met its burden under Section 5 of showing the absence of a discriminatory purpose with regard to a number of the new judgeships involved, namely, those in Dallas, Lubbock, Tarrant, and Victoria counties (i.e., Judicial Districts 363-364, and 371-377). In addition, we concluded that, even aside from

the designated post and majority-vote features, the at-large election method for the additional judgeships in Dallas, Lubbock, and Tarrant Counties, produced discriminatory results proscribed by Section 2 of the Voting Rights Act, 42 U.S.C. 1973c, and our earlier letter expressly noted that these judgeships were not entitled to preclearance for this additional reason.

Consequently, while our letter does say, in broad terms, that the Attorney General's objection was interposed to "the voting changes occasioned by Chapter 632," the concerns that led to our objection involved only the additional judgeships noted above. Of course, it is within the province of state authorities to decide whether, under state law, the other provisions of Chapter 632 may be enforced in view of the Attorney General's decision, but we wish to make clear our view that there is no Section 5 bar to enforcement of the additional judgeships in Dimmit, Maverick, Zavala, Collin, Denton, Williamson, Anderson, Cherokee, and Hidalgo Counties (i.e., Judicial Districts 365-370).

If you have any questions regarding this matter, please call George Schneider (202-514-8696), Attorney in the Voting Section.

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

DEC 21 1990

Cindy Maria Garner, Esq.
City Attorney
P.O. Box 1076
Crockett, Texas 75835

Dear Ms. Garner:

This refers to the five annexations (one adopted July 13, 1973, and four adopted March 27, 1990) to the City of Grapeland in Houston County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received the information to complete your submission on October 24, 1990.

The Attorney General does not interpose any objection to the 1973 annexation. However, we note that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the change.

With regard to the four 1990 annexations, however, we are unable to reach a similar conclusion. We have considered carefully the information you have provided, as well as Census data and information from other interested parties. At the outset, we note that the city elects a mayor and five councilmembers under an at-large system with staggered terms. While two of the four areas annexed in this package appear to be virtually all-black in population, the overall effect of the proposed annexations is to reduce the proportion of the city's black population by about 3.0 percentage points. In addition, the information available to us suggests that municipal elections in Grapeland are characterized by racially polarized voting. In that context, then, the increase in the white majority, as a result of the annexations, serves only to enhance the ability of white citizens to preclude black voters from electing candidates of their choice to the city council under the existing election system.

cc: Public File

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has no discriminatory purpose or effect. See Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.39(e)). In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that the city's burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the four proposed 1990 annexations.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that these changes have neither the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. In addition, Section 51.45 of the guidelines permits you to request that the Attorney General reconsider the objection and, in this regard, annexations of this nature usually may meet Section 5 standards if the city's election system is modified in a way that fairly reflects minority voting strength in the expanded city. See City of Richmond, 422 U.S. 358, 370 (1979); see also City of Port Arthur v. United States, 459 U.S. 159 (1982). Also, in that connection, it should be noted that such modifications need not necessarily involve adoption of a districting plan, since acceptable adjustments might include the use of such corrective measures as limited or cumulative voting. See, e.g., Dillard v. Chilton County Board of Education, 699 F. Supp. 870 (M.D. Ala. 1988); see also Dillard v. Crenshaw County, No. 85-T-1332-N (M.D. Ala.). However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the effect of the objection by the Attorney General is that the voting changes occasioned by the proposed 1990 annexations continue to be legally unenforceable. 28 C.F.R. 51.10.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action the City of Grapeland plans to take with respect to these matters. If you have any questions, feel free to call Ms. Lora L. Tredway (202-307-2290), Attorney in the Voting Section.

Sincerely,

John R. Dunne

John R. Dunne
Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

MAR 13 1991

Analeslie Muncy, Esq.
City Attorney
City of Dallas
1500 Marilla, 7-B North
Dallas, Texas 75201

Dear Ms. Muncy:

This refers to charter amendments to Chapter XXIV, Section 21 (1-5) of the municipal charter, which delay the regular May 1991 municipal election until November 1991 or January 1992, based on certain conditions, and provide an implementation schedule therefor, for the City of Dallas in Collin, Dallas, Denton, Kaufman, and Rockwall Counties, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received the information to complete your submission on January 15 and February 26 and 28, 1991.

We have carefully reviewed the information you have provided, along with the information available to us from related Section 5 submissions by the city, the Bureau of the Census, and other interested parties. At the outset, we note that the instant submission is related to litigation by minority plaintiffs, in which the court has found that the existing 8-3 election method for the city council violates Section 2 of the Voting Rights Act and specifically has ordered that the regularly scheduled May 4, 1991, municipal election shall go forward under an interim remedial 14-1 election system. Williams v. City of Dallas, No. 3-88-1152-R (N.D. Tex.) (Mar. 28, 1990, liability) (Feb. 1, 4, 5 and 27, 1991, remedy). We further note that the district court's remedial orders are based, in part, on its observation of nearly one year ago, that "an interim City Council election must be held as soon as possible in order to remedy the adverse effects of the 8-3 system -- the denial of equal access to the City's political process -- which African and Mexican-Americans have suffered in Dallas, for some 10-15 years." Id. slip op. at 239 (Mar. 28, 1990) (emphasis in original).

The instant submission was designed as an adjunct to the proposal to change to a 10-4-1 method of election and its original purpose was to delay the May 4, 1991, election to allow the city to use 1990 Census data to prepare and submit

for preclearance a specific districting proposal. As you are aware, we are presently providing expedited consideration to such a proposal. Because of procedural reasons, however, the proposal to postpone the election date must be considered now, before we have had the opportunity to complete our consideration of the underlying plan it was designed to facilitate and on which it is wholly dependent. Given the state of the ongoing litigation, approval of a delay in the May 4, 1991, election would interfere with and perhaps frustrate the careful remedial plan ordered by the district court.

We are, of course, aware that the Williams defendants are seeking immediate appellate relief regarding the district court's remedial orders. We intend to monitor that litigation closely and consider whether any future orders by the appellate court might suggest revisions or modifications to our disposition of this matter. We also will review further this proposal to postpone the election should we conclude, upon completion of our analysis, that the 10-4-1 plan satisfies the requirements of Section 5.

In the meantime, and for the reasons stated above, it would be premature and disruptive to preclear the election date change under Section 5. Accordingly, I cannot conclude, as I must under the Voting Rights Act, that the city's burden of demonstrating that this proposed change has neither the purpose nor the effect of discriminating on the basis of race has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the proposed charter amendments under Chapter XXIV, Section 21 (1-5), which provide for a delay of the regularly scheduled May 4, 1991, election and an implementation schedule therefor.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that these changes have neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. In addition, you may request that the Attorney General reconsider this objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, a delay in the regularly scheduled May 4, 1991, municipal election continues to be legally unenforceable. 28 C.F.R. 51.10 and 51.45.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the City of Dallas plans to take concerning these matters. If you have any questions, you should call Lora L. Tredway (202/307-2290), an attorney in the Voting Section.

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

March 19, 1991

Don Graf, Esq.
McCleskey, Harriger, Brazill & Graf
P. O. Drawer 6170
Lubbock, Texas 79493-6170

Dear Mr. Graf:

This refers to the following changes submitted under Section 5 of the Voting Rights Act of 1965, 42 U.S.C. 1973c, by the Lubbock County Water Control and Improvement District No. 1 in Lubbock County, Texas:

1. the adoption of a precinct system of voting which includes the establishment of four voting precincts;

2. the selection of polling places for each precinct, including the assignment of four current polling places (at Idalou, Buffalo Springs Lake, Slaton, and Haynes Elementary School) to the precincts, the elimination of three polling places (at the county courthouse, Wolfforth, and Shallowater), and the establishment of a new polling place (at Rush Elementary School); and

3. the implementation schedule for the change in method of election (to four single-member districts and one at large) which provided for Districts 2 and 3 and the at-large director to be elected at the January 1991 regular election, and the Districts 1 and 2 directors to be elected at the January 1993 election.

We received the information to complete your submission on January 18, 1991.

We have carefully reviewed the information you have provided, as well as Census and other available statistical data and comments from other interested parties. We note that the

instant changes stem from a suit filed under Section 2 of the Voting Rights Act, 42 U.S.C. 1973, in which minority residents of the Water District challenged the at-large method of election for the members of the District board of directors. Aguero v. Lubbock County Water Control and Improvement District No. 1, No. CA5-89-0077C (N.D. Tex.). Pursuant to a settlement of that action, a new method of election was adopted and precleared under Section 5 which allows minority residents an equal opportunity to elect candidates of their choice to the board. In particular, minority residents constitute a majority of the population in District 3 and a substantial minority of the population in District 2. The other two districts have relatively insignificant levels of minority population.

In implementing the new plan, the Water District determined that it would abandon the practice whereby a voter could cast a ballot on election day at any District polling place and, instead, decided to designate voting precincts which are coterminous with the single-member districts. Each precinct has been assigned its own discrete polling place or places.

In this regard, we note, at the outset, that the vast majority of the Water District's population resides in the City of Lubbock, located in the center of the county, and that the districting and precinct scheme divides the city into four nearly equal parts, so that at least three-quarters of the registered voters of each district or precinct are located in the city. For overwhelmingly white Precincts 1 and 4 the Water District, logically, has selected locations inside the city and has eliminated rural locations which historically have served few voters. However, for Precincts 2 and 3, where the minority population is concentrated, the District has chosen the opposite course. It proposes to eliminate the county courthouse site in the city, which in recent District elections has been the location with the second highest number of voters, and proposes to require city voters, who include the bulk of the Water District's minority voters, to travel to the more remote and inaccessible rural communities to vote on election day. Past voting experience in the county shows that the now eliminated county courthouse voting site has been the most convenient polling location for most minority voters.

The District has not offered any persuasive nonracial explanation for applying such a divergent standard in the selection of polling places. While we note, with respect to

District 3, the Water District's claim that it placed the poll in a town where the Hispanic county commissioner has an office, we have been presented with nothing which shows the relationship between that fact and the determination of what would constitute a convenient polling location for the precinct's electorate. The Water District also notes that minority voters in District 3 may choose to vote absentee at the courthouse. However, since this would appear to be equally true for voters in Districts 1 and 4, this observation serves but to suggest further the application of a different standard for Districts 2 and 3. With more specific reference to District 2, the Water District offers no explanation for its polling site selections. Thus, from all that is apparent, the polling site selections for Districts 2 and 3 would seem calculated to discourage turnout among minority voters and, accordingly, to undermine the electoral opportunities created by the new election system.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. See Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.52). In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that your burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the selection of polling places for Precincts 2 and 3.

With respect to the establishment the precinct system of voting, the polling places selected for Precincts 1 and 4, and the implementation schedule insofar as it does not affect the changes to which an objection has been interposed, the Attorney General does not interpose any objection under Section 5. However, we feel a responsibility to point out that Section 5 expressly provides that the failure of the Attorney General to object does not bar any subsequent judicial action to enjoin the enforcement of such changes. See 28 C.F.R. 51.41.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the changes to which an objection has been interposed have neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. In addition, Section 51.45 of the guidelines permits you to request that the Attorney

General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the selection of polling places for Precincts 2 and 3, including the elimination of the courthouse polling location, continue to be legally unenforceable. See 28 C.F.R. 51.10.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action Lubbock County Water Control and Improvement District No. 1 plans to take with regard to these matters. If you have any questions, feel free to call Mark A. Posner (202-307-1388), an attorney in the Voting Section.

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division

JRD:MAP:TCR:gmh
DJ 166-012-3
90-1268

April 22, 1991

Judy Underwood, Esq.
Walsh, Judge, Anderson,
Underwood & Schulze
P.O. Box 2156
Austin, Texas 78768

Dear Ms. Underwood:

This refers to the change in the method of electing the school board from at large to five single-member districts and two at large, the concurrent election of the at-large seats by numbered position, the districting plan, the implementation schedule, and the polling place change for the Refugio Independent School District in Refugio County, Texas, submitted to the Attorney General under Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your last submittal of information regarding these matters on February 20, 1991.

The Attorney General does not interpose any objection to the submitted polling place change. However, we note that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the change. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41).

With respect to the other submitted changes, however, we cannot reach a similar conclusion. As you are aware, on May 8, 1989, the Attorney General interposed an objection under Section 5 to an earlier five district, two at large plan adopted by the school district. In that regard, we found that in light of the electoral circumstances present in the school district (in particular, the apparent pattern of polarized voting), the proposed plan unnecessarily minimized the opportunity of minorities to elect candidates of their choice to office. We noted that our information tended to support a concern that the 5-2 system had been selected over a system of seven single-member districts "to avoid the potential for fair minority representation in three majority-minority districts." We also noted that the use of staggered terms for the at-large seats would further limit minority electoral opportunity by foreclosing the use of the election device of single-shot voting.

cc: Public File

In response to the objection, the school district proposes a redesigned 5-2 system, eliminating the use of staggered terms for the two at-large seats which characterized the earlier plan. While two of the five districts in the new proposal seem to provide minority voters with a realistic opportunity to elect candidates of their choice to the school board, like the previous proposal the present one continues to limit the opportunity of minorities to no more than those two seats by precluding the use of single-shot voting for the at-large positions, through the use of numbered posts.

We recognize that the school district has concluded that state law requires the use of numbered positions for the at-large seats in a 5-2 plan such as this, but we are also aware that other independent school districts in Texas have adopted 5-2 plans without numbered posts. In any event, the school district has not adequately explained, in nonracial terms, why other alternative election systems, such as a seven single-member district plan, which concededly are sanctioned by state law could not be adopted by the Refugio Independent School District.

In that regard, we note that, even though our May 8, 1989, letter expressed concern over the lack of opportunity for minority citizens to participate in that decision making process, it appears that in developing the instant plan the school district perpetuated this problem. Thus, while the district did establish a committee of minority citizens to examine the election method issue, the committee appears to have been excluded from any participation in the process once it made known its preference for a seven single-member district plan.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. See Georgia v. United States, 411 U.S. 526 (1973); see also 28 C.F.R. 51.52. In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that your burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the submitted changes, with the exception of the polling place change noted above.

Of course, under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed changes have neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. In addition, you may request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the objected-to changes continue to be legally unenforceable. 28 C.F.R. 51.10 and 51.45.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the Refugio Independent School District plans to take concerning this matter. If you have any questions, you should call Mark A. Posner (202-307-1388), an attorney in the Voting Section.

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

MAY 6 1991

Analeslie Muncy, Esq.
City Attorney
1500 Marilla, 7-B North
Dallas, Texas 75201

Dear Ms. Muncy:

This refers to proposed amendments to the municipal charter of the City of Dallas which provide for an increase in the size of the city council from eleven to fifteen members; a change in the method of election for council members and mayor from election from eight single-member districts and three at-large seats, including the mayor, for concurrent terms by majority vote, to a 10-4-1 election system, which includes ten single-member local districts, four single-member regional quadrant districts, and the mayor at large for concurrent terms by majority vote; a change from a two-year to a four-year term for mayor; a decrease in the number of consecutive terms for the mayor; the changes in the definition of term in order to determine the number of consecutive terms served for mayor; the changes in the definition of term to determine the number of consecutive terms for non-mayoral councilmembers; the change in the effective date for new terms of office for mayor and council; the changes in candidate qualification (Chapter IV, Section 6); the alteration in ballot language to implement the proposed 10-4-1 method of election (Chapter IV, Section 8); the changes in the powers and duties of the mayor and council pursuant to Chapter III, Section 2; Chapter XVI, Section 1; Chapter XVII, Section 2; and Chapter XXIV, Section 13; and the 1991 redistricting plan for the 10-4-1 election system for the City of Dallas in Collin, Dallas, Denton, Kaufman, and Rockwall Counties, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your last submittal of information necessary to review these matters on May 3, 1991.

We have carefully reviewed the information you have provided, along with information available to us from related Section 5 submissions, the Bureau of the Census, and other interested parties. At the outset, we note that 1990 Census data reflect a significant increase in the city's Hispanic proportion

of total population and that black and Hispanic residents now constitute 50 percent of the city's total population. We also note that the federal district court has found that the existing 8-3 election method for the city council violates Section 2 of the Voting Rights Act and has ordered new elections as soon as possible under a plan that will "remedy the adverse effects of the 8-3 system -- the denial of equal access to the City's political process -- which African[-Americans] and Mexican-Americans have suffered in Dallas, for some 10-15 years." Williams v. City of Dallas, 734 F. Supp. 1317, 1412 (N.D. Tex. 1990) (liability); No. 3-88-1152-R (N.D. Tex.) (Feb. 1, 4, 5, and 27, 1991) (remedy); 59 U.S.L.W. 3672 (U.S. Apr. 2, 1991) (No. A-716), denying application to vacate stay from No. 91-1178 (5th Cir. Mar. 15, 1991) (order staying remedial orders). In its most recent order the court of appeals deferred a review of the merits of the appeal in order to provide a "reasonable time" for the Justice Department to review a submission of a change in the method of election and a redistricting plan proposed by the city.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of demonstrating that a proposed change does not have a racially discriminatory purpose or effect. Georgia v. United States, 411 U.S. 526 (1973). In addition, where, as here, an existing election system has been held by the court to be in violation of the Voting Rights Act, the affected jurisdiction not only bears the burden of demonstrating that the proposed plan is free of the proscribed purpose and effect, but also the plan must remedy the dilution found by the court to exist. See S. Rep. No. 417, 97th Cong., 2d Sess. 31 (1982). See also Dillard v. Crenshaw County, 831 F.2d 246, 249 (11th Cir. 1987); Edge v. Sumter County Sch. Dist., 775 F.2d 1509, 1510 (11th Cir. 1985). The proposed 10-4-1 election method now before us for review under Section 5 is the city's proposal to remedy the violation found by the Williams court.

In addressing these matters, the city has presented to us alternative proposals consisting of one component of four quadrant districts [4C] and two alternative components for the ten local districts [10F(3) and 10I(1)]. You have explained that the city council has formally adopted both ten-district components and that while 10F(3) initially was the city's preferred plan, the city now considers 10I(1) to be its preferred ten-district plan. The city maintains that its proposed electoral system and the redistricting plan have no racially discriminatory purpose or effect and provide minority voters with an equal opportunity to participate and elect their chosen candidates. Concerns have been raised, however, that under the proposed "10-4-1" system it is not possible to devise a plan in which minority voters will be afforded the same opportunity as white voters to elect their preferred candidates to the city council. Our review of the alternatives currently under submission to us lends some credence to those concerns.

We have carefully analyzed population and registered voter data for each of the proposals, as well as citizenship data, election returns, and statistical analyses by the city's experts and others. We note that the city has acknowledged that there was virtually no minority input in the development and selection of any of the redistricting proposals submitted for our review. Furthermore, with regard to the quadrant component, the information available to us suggests that these regional districts are, in many respects, the functional equivalent of the at-large council positions that have been found to be racially discriminatory, and we are not persuaded that the quadrant districts, as submitted, remedy the dilution occasioned by at-large elections in Dallas.

With regard to the opportunities for both black and Hispanic voters under the ten-district components, it appears that neither of the proposals is designed to afford equal opportunity to minority voters. For example, in both the 10F(3) and the 10I(1) plans, it appears that neither of the two districts that the city offers as providing an opportunity for Hispanic voters actually would accomplish that goal. In both plans, it appears that Hispanics are less than 45 percent of the citizen voting-age population in each of the two districts. Furthermore, those districts are drawn in a way that unnecessarily merges concentrations of Hispanic and white voters, particularly in 10F(3) District A and 10I(1) District B, where the white voter group is one with particularly high registration and turnout rates. The proposed ten-district plans also merge concentrations of black and white voters in some areas where the white voter group historically has been antipathetic to black persons. In addition, the unnecessary fragmentation of black neighborhoods in 10F(3) between Districts B, C, and F, and in 10I(1) between Districts E and F would appear to minimize black voting strength.

We further note the city's recognition that under both of the two adopted ten-district proposals as well as under the quadrant component, the opportunities for Hispanic voters are not expected to be fully realized until the mid-1990s at the earliest, notwithstanding the concerns of the Hispanic community and the conclusion by the Williams court that Hispanic voters be able to elect candidates of their choice to the council as soon as possible.

In sum, the city maintains that the proposed electoral system will provide seven districts that allow minority voters to participate equally in the electoral process and to elect candidates of their choice to office. In our view, however, the city has not demonstrated that the proposal now before us provides black and Hispanic voters with a realistic opportunity to elect candidates of their choice to the city council in any of

the quadrant districts as proposed to be drawn or in any more than three of the ten local districts.

With regard to the proposal to amend candidate qualifications so that a term of 366 days, rather than two full years, will be counted in determining the limitation on consecutive terms for a non-mayoral councilmember, the information available to us demonstrates that only the two incumbent black councilmembers would be directly affected by this proposal, such that they would be ineligible to seek re-election in 1991. Further, the information available to us indicates that the change was proposed for this purpose and that the city rejected an alternative that would have applied this change prospectively, rather than retroactively.

In light of the information presently available to us, therefore, and under the circumstances discussed above, I cannot conclude, as I must under the Voting Rights Act, that the city's burden has been sustained in this instance with regard to either of the 10-4-1 proposals now before us or the proposed changes in the manner of counting consecutive terms to determine non-mayoral candidate eligibility. In addition, it does not appear that either of the current proposals assures to the affected minority group members the equality of opportunity necessary to remedy the Section 2 violation found to exist in the current system. Accordingly, on behalf of the Attorney General, I must object to the proposed redistricting plans and, therefore, to the proposed charter amendments establishing the 10-4-1 method of election and changing the definition of terms under the consecutive terms provisions for non-mayoral candidate eligibility.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that these changes have neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. In addition, you may request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the objected-to changes continue to be legally unenforceable. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.10 and 51.45).

The Attorney General does not interpose any objection to the increase in the size of the city council from eleven to fifteen members, the change in the effective date of term of office for mayor and council, and the changes in the powers and duties of the mayor and council pursuant to Chapter III, Section 2; Chapter XVI, Section 1; and Chapter XVII, Section 2. However, we note that Section 5 expressly provides that the failure of the

Attorney General to object does not bar subsequent litigation to enjoin the enforcement of these changes. 28 C.F.R. 51.41.

The remaining changes under the proposed charter amendments are directly related to or dependent on the change to the proposed 10-4-1 method of election. Accordingly, the Attorney General is unable to make any determination under Section 5 at this time regarding concurrent terms by majority vote for mayor and council; a change from a two-year to a four-year term for mayor; a decrease in the number of consecutive terms for the mayor; the changes in the definition of term in order to determine the number of consecutive terms served for mayor; the changes in candidate qualification (Chapter IV, Section 6); the alteration in ballot language to implement the proposed 10-4-1 method of election (Chapter IV, Section 8); and the changes in the powers and duties of the mayor and council pursuant to Chapter XXIV, Section 13. See also 28 C.F.R. 51.22(b) and 51.35.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the City of Dallas plans to take concerning these matters. If you have any questions, you should call Lora L. Tredway (202-307-2290), an attorney in the Voting Section.

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division

JRD:GAS:GAS:lrj
DJ 166-012-3
90-0003

August 23, 1991

Tom Harrison, Esq.
Special Assistant for Elections
Elections Division
P.O. Box 12060
Austin, Texas 78711-2060

Dear Mr. Harrison:

This refers to Chapter 206, S.B. No. 907 (1989), which mandates procedures for creating hospital districts; provides for special elections therefor; establishes petition, notice, and ballot requirements for elections to create hospital districts; restricts the frequency of creation elections under specified circumstances; provides for interim appointed and permanent elected boards of directors; mandates an odd number of directors, with no fewer than five; permits three methods of election for a board of directors; mandates two-year, staggered terms and a plurality vote requirement; provides implementation plans; mandates the first Saturday in May as the regular election date; mandates regular election petition and notice requirements; specifies candidate qualifications; provides procedures for filling vacancies; establishes compensation provisions and powers, duties, and responsibilities for elected directors; provides procedures for annexation; provides for dissolution of a hospital district created pursuant to the statute, subject to special elections therefor; and permits special bond and tax elections, for the State of Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received the information necessary to complete your submission on June 25, 1991.

Chapter 206 requires as a first step in creating a hospital district the circulation for signature of petitions which describe the method to be used to elect hospital directors. The act limits the permissible methods of election to three: (1) at large; (2) at large by place (numbered posts); or (3) a

combination of district and at-large seats. The third method requires the use of county commissioner districts. It appears that this last method would normally be unavailable to hospital districts that are not composed of whole counties, since it is likely that the resulting election districts would not satisfy the constitutional requirement of population equality.

Prior to the adoption of Chapter 206 the only means of creating a hospital district with direct control over financing was by a special act of the legislature which was tailored to the individual needs of the proposed district. Under this procedure there existed no express limitation on the method of selecting the board of directors of such a district.

Our understanding is that Chapter 206 was adopted to provide a general mechanism for hospital districts to be created without the need for individual legislation. The legislative history of the act indicates that no special consideration was given to the methods of selecting the hospital boards. It appears that the act's limitation on methods of election resulted from adapting language in a model bill previously used to create individual hospital districts. Although the three methods listed are said to be the methods most commonly specified in previous acts creating individual districts, the instant act apparently reflects no strong state policy that election methods for hospital districts should be so limited. Indeed, the legislature has on many previous occasions specified other methods of selecting hospital directors, and this Department has reviewed and precleared numerous such instances under Section 5. Such alternative methods, such as those using single-member districts exclusively or incorporating districts that do not correspond to commissioner districts would not be permitted under Chapter 206.

Our experience with hospital districts under Section 5 has shown that the method of selecting hospital district directors is often of significant interest and concern to voters, and raises important questions under the Voting Rights Act. We have twice interposed objections under Section 5 to the initial methods chosen by the legislature to elect individual hospital district boards. Our experience has led us to conclude that, as applied in particular cases, none of the methods of election specified in Chapter 206 would meet the requirements for preclearance under Section 5. The dilutive effect which at-large methods of election can have by submerging racial and ethnic minorities is well recognized in the case law and in our experience under Section 5. This effect is exacerbated by the limitation on single-shot voting resulting from the use of numbered posts or staggered terms. Nor are these concerns allayed by the inclusion in the act of the method employing commissioner districts. In the case of hospital districts formed of portions of counties,

this method would not appear to be available. Even when available, its limitation to four districts may well be insufficient to produce an electoral system in which minority voters would have an equal opportunity to participate in the electoral process and elect candidates of their choice and the requirement that there be at least one at-large seat could further reduce the likelihood that the electoral system would satisfy the Voting Rights Act.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. See Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.52). In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that your burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the voting changes occasioned by Chapter 206 (1989).

We note that under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed changes have neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. See 28 C.F.R. 51.44. In addition, you may request that the Attorney General reconsider the objection. See 28 C.F.R. 51.45. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, Chapter 206 (1989) continues to be legally unenforceable. See 28 C.F.R. 51.10.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the State of Texas plans to take concerning this matter. If you have any questions, you should call George Schneider (202-307-3153), an attorney in the Voting Section.

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

OCT 4 1991

Honorable John Hannah, Jr.
Secretary of State
P. O. Box 12060
Austin, Texas 78711-2060

Clarence A. West, Esq.
City Attorney
P. O. Box 1562
Houston, Texas 77251-1562

Dear Messrs. Hannah and West:

This refers to Chapter 666 (1991), which amends the procedures for filling vacancies; and the 1991 redistricting plan for the City of Houston in Harris, Montgomery, and Fort Bend Counties, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your initial response to our request for additional information on August 29, 1991, and received further responses on several dates thereafter.

We have carefully considered the extensive information provided by the city and the arguments ably presented by its representatives, as well as the comments and information provided by other individuals, including members of the city's black and Hispanic communities. At the outset, we note that in making the necessary Section 5 determinations, we apply the legal rules and precedents established by the federal courts and our published administrative guidelines. See, e.g., Procedures for the Administration of Section 5 (28 C.F.R. 51.52 (a), 51.55, 51.56). For example, we cannot preclear those portions of a plan where the jurisdiction has deferred to the interests of incumbents while refusing to accommodate the community of interest shared by insular minorities. See, e.g., Garza v. Los Angeles County, 918 F.2d 763, 771 (9th Cir. 1990), cert. denied, 111 S. Ct. 681 (1991); Ketchum v. Byrne, 740 F.2d 1398, 1408-09 (7th Cir. 1984), cert. denied, 471 U.S. 1135 (1985). Such concerns are frequently related to the unnecessary fragmentation of minority communities or the needless packing of minority constituents into a minimal number of districts in which they can expect to elect candidates of their choice. See 28 C.F.R. 51.59. We endeavor to evaluate these issues in the context of the demographic changes which compelled the particular jurisdiction's need to redistrict (id.). Finally, our entire review is guided by the principle that the Act insures fair election opportunities and does not require that any jurisdiction attempt to guarantee racial or ethnic proportional results.

Turning to the instant submission, we note that perhaps the most striking demographic change experienced by the City of Houston in the past decade has been the dramatic increase in the Hispanic population. From 1980 to 1990, the Hispanic population grew by 60 percent, rising from 17.6 percent to 27.6 percent of the total city population. The black population percentage remained essentially unchanged while the white population percentage dropped from 52.3 to 40.6 percent.

This demographic shift, however, does not appear to have been reflected in any significant increase in the past decade in the opportunity of Hispanic voters to elect candidates of their choice to the city council. Following the city's adoption in 1979 of the current system of nine councilmembers elected from single-member districts, five elected at-large, and the mayor elected at large (the "9-5-1" system), each districting plan has included one district with an Hispanic majority and the sole Hispanic elected to the council has represented that district. As described by the city, there are a number of factors relevant to understanding this disparity between potential Hispanic voting strength and what has been realized, but, in large part, it appears to be the product of an ongoing pattern of polarized voting operating in the context of an electoral system in which only one district has an Hispanic majority.

Recently, in response to concerns voiced by the Hispanic community for greater representation on the city council, the city undertook an intensive review of its electoral system. Numerous hearings and meetings were conducted, from February through April of this year, and minority leaders testified about the underrepresentation issue. After much debate, it was agreed to propose an enlarged city council elected pursuant to a 16-6-1 system. However, the change was conditioned on approval in a referendum, and the proposal was subsequently defeated in the August 1991 citywide vote.

It was in this context that, in May and June of this year, the city council considered and adopted the proposed redistricting plan for the existing 9-5-1 structure. The city informs us that here, as well, it sought to recognize the growing Hispanic population. However, the plan continues to provide only one district in which Hispanic voters will have the opportunity to elect a candidate of their choice and fragments the remainder of the community into a number of adjoining districts.

In this regard, we note that several alternative plans were developed which would more fairly represent Hispanic voting strength in the city. In particular, it was shown that by avoiding fragmentation a plan would contain two districts in which Hispanics constitute a majority of the voting age population. While we understand that these illustrative districts were developed in the context of an alternative plan that had an unrelated deficiency, we have received no explanation for the city's decision not to present these districts for public review in a plan that properly could be implemented.

We have carefully considered the city's contentions concerning the redistricting process, the redistricting issues with which it was confronted, and the reasons stated for the choices it ultimately made. This review indicates that, by the end of the process, it was generally recognized that a nine-district plan with two districts with Hispanic voting age population majorities would provide Hispanic voters with a substantially greater electoral opportunity than contained in the proposed plan.

We also take note that in the plan adopted to implement the 16-6-1 proposal, the city appears to have been willing to recognize the Hispanic population growth. However, in the nine district proposal this latter goal appears to have been subordinated to a concern for protecting white incumbent councilmembers. As noted above, while incumbency is not in and of itself an inappropriate consideration, it may not be accomplished at the expense of minority voting potential. See, e.g., Garza, 918 F.2d at 771.

Finally, we note that another factor which seemingly limited the city's ability to fairly reflect Hispanic voting strength was the decision not to split existing county precincts. We are aware that the plan ultimately must be implemented without such precinct splits, but it is our understanding that if such splits are necessary in order to adopt a proper plan, the county may then adjust its precincts to follow the new city district lines.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. See Georgia v. United States, 411 U.S. 526 (1973); see also 28 C.F.R. 51.52. In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that your burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the 1991 redistricting plan.

With regard to the change in the procedures for filling vacancies, the Attorney General does not interpose any objection. However, we note that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the change. In addition, as authorized by Section 5, we reserve the right to reexamine this change if additional information that would otherwise require an objection comes to our attention during the remainder of the 60-day period. See 28 C.F.R. 51.41 and 51.43.

We note that under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed change has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. In addition, you may request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the redistricting plan continues to be legally unenforceable. Clark v. Roemer, 59 U.S.L.W. 4583 (U.S. June 3, 1991); 28 C.F.R. 51.10 and 51.45.

To enable us to meet our responsibility to enforce the Voting Rights Act, and in light of the impending municipal election, please inform us of the action the city plans to take concerning this matter. In this regard, we stand ready to immediately review any remedial redistricting plan adopted by the city. If you have any questions, you should call Mark A. Posner (202) 307-1388, an attorney in the Voting Section.

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

November 12, 1991

Honorable John Hannah, Jr.
Secretary of State
P.O. Box 12060
Austin, Texas 78711-2060

Dear Mr. Secretary:

This refers to Chapter No. 899 (1991), which provides the 1991 redistricting plan for the House of Representatives of the State of Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your initial submission on September 12, 1991; supplemental information was received on September 17 and 23, October 29, and November 1, 4, and 8, 1991.

We have carefully considered the information you have provided, as well as Census data and information and comments from other interested persons. At the outset, we note that the state waited nearly three months before seeking the requisite preclearance under Section 5 for the House redistricting plan. Although we have found that your initial submission was not complete, in an effort to expedite our review, as you requested, we have sought additional information informally and we are providing a determination within the 60-day period following your initial submission.

The Voting Rights Act requires that the submitting authority demonstrate that the proposed change neither has a discriminatory purpose nor a discriminatory effect. Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.52). In addition, preclearance may not be obtained if implementation of the change would clearly violate Section 2 of the Act. 28 C.F.R. 51.55. In the case of a statewide redistricting, Section 5 requires us not only to review the overall impact of the plan on minority voters, but also to understand the reasons for and the impact of each of the legislative choices that were made in adopting the particular plan.

In making these judgments, we apply the legal rules and precedents established by the federal courts and our published administrative guidelines. See, e.g., 28 C.F.R. 51.52(a), 51.55, 51.56. For example, we cannot preclear those portions of a plan where the legislature has deferred to the interests of incumbents

while refusing to accommodate the community of interest shared by insular minorities. See, e.g., Garza v. Los Angeles County, 918 F.2d 763, 771 (9th Cir. 1990), cert. denied, 111 S. Ct. 681 (1991); Ketchum v. Byrne, 740 F.2d 1398, 1408-09 (7th Cir. 1984), cert. denied, 471 U.S. 1135 (1985). Such concerns are frequently related to the unnecessary fragmentation of minority communities or the needless packing of minority constituents into a minimal number of districts in which they can expect to elect candidates of their choice. See 28 C.F.R. 51.59. We endeavor to evaluate these issues in the context of the demographic changes which compelled the particular jurisdiction's need to redistrict (id.). Finally, our entire review is guided by the principle that the Act insures fair election opportunities and does not require that any jurisdiction attempt to guarantee racially or ethnically proportional results.

Turning now to the instant submission, the state House is composed of 150 members elected from single-member districts. Accordingly, the House plan required redistricting decisions at a substantially different scale than in Texas' other statewide plans currently undergoing Section 5 review, which contain far fewer districts. In addition, the House plan was adopted several months earlier than those other statewide redistricting plans.

In terms of the state's demography, one of the most significant changes in the past decade has been the increase in the Hispanic population. From 1980 to 1990, the Hispanic share of the state's population increased from about 21 percent to 26 percent while the black share of the population remained at about 12 percent. For statewide redistricting purposes, significant Hispanic population concentrations are located in south and southwest Texas and in the urban areas of San Antonio (Bexar County), Houston (Harris County), Dallas (Dallas County) and Fort Worth (Tarrant County). There are significant black population concentrations in Houston, Dallas and Fort Worth.

There are 20 Hispanic and 13 black state representatives at this time. Most have been elected from districts in which potential minority voters predominate. Nineteen of the 20 Hispanic representatives serve districts that are over 50 percent Hispanic in voting age population and over 40 percent Hispanic in voter registration. Of the 13 black representatives, eight serve districts that are over 50 percent black in voting age population; the remainder serve districts in which the combined black plus Hispanic voting age populations comprise at least 46 percent of the district. This election history, court findings in voting rights cases, and other information in your submission have led us to examine the 1991 redistricting plan in light of the pattern of racially polarized voting that appears generally to characterize legislative elections in the state.

In addition, your submission notes that both the current and the proposed House plans are drawn (in part) by assigning a whole number of districts to the larger urban counties. Thus, the plans essentially include severable "sub-districting plans" within the overall plan.

With this background in mind, our analysis shows that the proposed Texas House redistricting plan exhibits a pattern of districting decisions that appears to minimize Hispanic voting strength through packing or fragmenting Hispanic population concentrations unnecessarily.

El Paso County, one of the most populous and heavily Hispanic counties in the state, was apportioned five districts. Two of the districts are well over 80 percent Hispanic in voting age population and Hispanics have chosen to be represented by Hispanic legislators. Because of demographic changes in the past decade, it appears that an effective Hispanic registration majority was emerging in the district located between those two districts, which currently has a white incumbent. The plan, however, reduces that district's Hispanic registration by about four percentage points. The state has offered no adequate explanation for this approach as alternatives were available that would not reduce the Hispanic population in this district.

In south Texas (the area south and southwest of Bexar County, and north of Cameron and Hidalgo Counties), the state chose to draw the district lines generally in an east-west manner. This has the effect of overconcentrating Hispanics in the southernmost districts. At the same time, the two districts (31 and 44) in the northern portion of this area have white voting age population and registration majorities. We understand that it is generally recognized that a north-south configuration would produce an additional district with a significant electoral opportunity for minority voters, and it appears that this option was rejected in large part to protect white incumbent legislators. Similarly, while five districts in Cameron and Hidalgo Counties have substantial Hispanic populations, the Hispanic share of the voting age population and registration in the one district with a white incumbent was reduced. It appears that the asserted interest in keeping the City of Harlingen entirely within this district could have been satisfied without the proposed reduction in the Hispanic share of the population in the district.

In Bexar County, the state decided to increase the number of districts from ten to eleven. While the Hispanic share of the county's population has increased from about 47 percent to almost 50 percent, the plan appears to reduce Hispanic voting strength by packing Hispanics in District 118, which is over 77 percent Hispanic in voting age population, while reducing unnecessarily

the Hispanic share of the voting age population in adjoining District 117 (from 54.8% to 50.9%). Particularly given the fact that last decade one of the state's House redistricting plans for Bexar County suffered from the same defect of packing districts with Hispanic population, Terrazas v. Clements, 537 F. Supp. 514, 541-542 (N.D. Tex. 1982), the state has not adequately explained this proposed configuration.

In Dallas County, the decision apparently was made late in the legislative process to reduce from 17 to 16 the number of districts apportioned to the county. The proposed plan includes five districts in which blacks and Hispanics combined comprise over 60 percent of the voting age population. In four of those districts blacks comprise between 46 and 55 percent of the voting age population and in the fifth district Hispanics comprise 57 percent of the voting age population. The plan appears fairly to reflect black voting strength in the county. For Hispanics, however, we are unable to reach the same conclusion. Our analysis indicates that the plan fragments the growing Hispanic population concentrations in the City of Dallas resulting in a significant reduction in the electoral opportunities for Hispanics in the existing district in that area. This fragmentation does not appear to have been necessary to create other districts in which Hispanics or blacks would have the potential to elect their chosen representatives. Indeed, it appears that the legislature was aware that relatively compact districts may be centered on the Hispanic concentrations, thus, more fairly recognizing the fast growing Hispanic population in Dallas County without adversely affecting the four districts with substantial black populations.

In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that the state's burden has been sustained with regard to the redistricting here under review. Therefore, on behalf of the Attorney General, I must object to the 1991 redistricting plan for the State House of Representatives because of the concerns relating to the proposed configurations for the areas discussed above.

Of course, as provided by Section 5, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed 1991 House redistricting plan has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group and, as you are aware, the State of Texas has filed a lawsuit in which it appears to seek such relief. Texas v. United States, No. 91-2383 (PMW U.S.C.A., SS, MB) (D.D.C.). In addition, the state may request that the Attorney General reconsider the objection.

Until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the 1991 redistricting

plan for the State House of Representatives continues to be legally unenforceable. Clark v. Roemer, 59 U.S.L.W. 4583 (U.S. June 3, 1991); 28 C.F.R. 51.10 and 51.45. In this regard, you should be aware that the opening of candidate qualifying pursuant to the 1991 plan would constitute a prohibited implementation of this plan. South Carolina v. United States, 585 F. Supp. 418 (D.D.C. 1984); Busbee v. Smith, 549 F. Supp. 494, 497 n.1 (D.D.C. 1982). As we recently informed the court in the pending District of Columbia litigation, we will seek an order enjoining any such illegal implementation of the plan. In addition, in view of that pending litigation, the state may not seek authorization from a state or federal court in Texas or acquiesce in an order from such a court for use of this plan absent preclearance. South Carolina v. United States, 589 F. Supp. 757 (D.D.C. 1984).

We understand that the current schedule calls for candidate qualifying to begin on December 3, 1991, for a primary election on March 10, 1992, and a general election on November 3, 1992. We believe that sufficient time remains for the state to make the necessary adjustments to the submitted plan and to obtain Section 5 preclearance for the plan so that the election may proceed on schedule under a plan that meets the requirements of federal law. Should the state decide to seek to adopt a new plan, our staff remains available to discuss further the nature of our concerns with the submitted plan; if a new plan is adopted and administrative review is sought, we are prepared to respond on an expedited basis.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the State of Texas plans to take concerning this matter. If you have any questions, you should call Steven H. Rosenbaum, Deputy Chief of the Voting Section at (202) 307-3143.

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

DEC 24 1991

Richard C. Hile, Esq.
Tonahill, Hile, Leister
& Jacobellis
P.O. Box 670
Jasper, Texas 75951

Dear Mr. Hile:

This refers to your request that the Attorney General reconsider the August 12, 1988, objection under Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c, to the annexation (Ordinance No. 3-88-1) to the City of Jasper in Jasper County, Texas. We received your letter on October 30, 1991; supplemental information was received on November 5, 1991.

This also refers to the change in method of election for the city council from five members and a mayor elected at large to four members elected from single-member districts and the mayor and one member elected at large; the implementation schedule; the districting plan; the limit on number of consecutive terms for mayor and council; changes in candidate qualifications; the realignment of voting precincts; the establishment of three additional voting precincts and polling places; and the procedures for conducting the August 10, 1991, special election for the city, submitted to the Attorney General pursuant to Section 5. We received your initial submission on October 30, 1991; supplemental information was received on November 5, 1991.

The Attorney General does not interpose any objection to the specified changes in the city's electoral system, including the term limits, candidate qualifications, and implementation schedule; the districting plan; the precinct and polling place changes; and the special election. With regard to the 1988 annexation, we note that the new electoral system appears fairly to reflect minority voting strength in the city as it is expanded by the annexation. Accordingly, pursuant to Section 51.48(b) of the Procedures for the Administration of Section 5 (28 C.F.R.),

the objection interposed to the annexation by Ordinance No. 3-88-1 is hereby withdrawn. We note that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of these changes. See also 28 C.F.R. 51.41.

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

DEC 24 1991

John T. Fleming, Esq.
Henslee, Ryan & Groce, P.C.
Great Hill Plaza
9600 Great Hills Trail
Suite 300 West
Austin, Texas 78759

Dear Mr. Fleming:

This refers to the change in method of election from seven trustees elected at large by numbered positions to five trustees elected from single-member districts and two elected at large, the districting plan, implementation schedule, precinct realignment and changes in polling places for the Del Valle Independent School District in Travis County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your response to our request for additional information on October 31, 1991.

We have carefully reviewed the information you have provided, as well as Census data and information and comments from other interested persons. At the outset, we note that according to the 1990 Census data, black and Hispanic residents consitute 44 percent of the school district's total population. We also note that the court in Lopez v. Del Valle ISD, No. 475,874, slip. op. (D. Travis County, TX May 21, 1991), has found that the existing at-large method of election discriminates against blacks and Hispanics in violation of the Texas Equal Rights Amendment and the state's Equal Protection Clause.

As the school district has acknowledged, the proposed plan includes only one majority minority district. At the same time, the plan maintains two at-large seats, a feature which the court has found to be racially discriminatory in the context of the racial bloc voting that exists in school district elections. Several alternative plans were available for consideration by the school board in which minority voters would have an opportunity to elect candidates of their choice to at least two trustee positions. We understand that these alternative plans generally are favored by the minority community and would appear more fairly to reflect minority voting strength in the school district.

cc: Public File

With respect to the changes in polling place locations, serious concerns have been raised that the polling place change for District 4, now located in the rural area of the county several miles distant from the minority community in the Montopolis area of the district, will make it more difficult for minority voters to get to the polls and vote. While we are aware that because of precinct boundary changes the Montopolis Recreation Center, which had previously served as the polling place for this area, is no longer in the minority district, other sites close by could have been chosen. The school district has failed to offer any persuasive nonracial reasons for its decisions in this regard.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of demonstrating that proposed changes do not have a racially discriminatory purpose or effect. Georgia v. United States, 411 U.S. 526 (1973). In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that the school district's burden has been sustained in this instance. Accordingly, on behalf of the Attorney General, I must object to the proposed method of election as well as the districting plan and the polling place change for District 4 for the Del Valle Independent School District.

We note that under Section 5 you have the right to seek declaratory judgment from the United States District Court for the District of Columbia that these changes have neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. In addition, you may request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the method of election, the districting plan and polling place change continue to be legally unenforceable. Clark v. Roemer, 59 U.S.L.W. 4583 (U.S. June 3, 1991); 28 C.F.R. 51.10 and 51.45.

With regard to the realignment of voting precincts, the remaining polling place changes and the implementation schedule, it is apparent that these changes are directly related to the change in the method of election and the districting plan. Since these changes are dependent upon the objected-to changes, the Attorney General is unable to make a final determination with respect to them at this time. 28 C.F.R. 51.22(b).

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the Del Valle Independent School District plans to take concerning these matters. If you have any questions, you should call Richard Jerome (202-514-8696), an attorney in the Voting Section.

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

JAN 07 1992

Ronald B. Collins, Esq.
Duckett, Bouligny, Collins,
Clapp & Collins
P.O. Box 1567
El Campo, Texas 77437

Dear Mr. Collins:

This refers to the proposed change in the method of concurrently electing the three at-large members of the city council from three elected by plurality vote without numbered positions to two elected by plurality vote without numbered positions, and one elected by majority vote to a separate position designated as the mayor; and the change in the method of electing the mayor from selection among the council to direct election for the City of El Campo in Wharton County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your response to the written request for additional information on November 8, 1991; further supplemental information was received on December 13, 1991.

We have considered carefully the information you have provided, as well as information provided by other interested persons. At the outset, we note that in the context of the ongoing pattern of racially polarized voting which appears to exist in city elections, the current election system permits minority voters two avenues by which they may elect candidates of their choice to the seven-member city council--in the single-member district in which minorities constitute a substantial majority of the population, and as a result of the opportunity afforded minorities to elect one of the at-large councilmembers. This latter opportunity arises in major part from the use of a plurality-win provision and the fact that minority voters may

utilize the device of single-shot voting in a situation where three positions are being filled concurrently. Indeed, as appears to be generally recognized in the city, the ability to single-shot has played an important role in the success enjoyed by minority voters in recent at-large elections.

The city now proposes to reduce the number of at-large seats elected as a group from three to two by separately designating one seat on the ballot as that of the mayor. In this regard, we note that of the four elections in which a minority candidate has been elected at large, in one the minority candidate finished third (and only barely ahead of the fourth-place finisher) and in two others the minority candidate finished second, but only a few votes ahead of the third-place finisher. In these circumstances, it appears that the proposed shrinking of the at-large pool from three to two would diminish the opportunity of minority voters to effectively single-shot and thus would "lead to a retrogression in the position of ... minorities with respect to their effective exercise of the electoral franchise." Beer v. United States, 425 U.S. 130, 141 (1976). Likewise, the change to a majority-vote requirement for the separately designated at-large position would appear to contribute further to such a retrogression in minority electoral opportunity.

As you are aware, the Attorney General has found it necessary to interpose Section 5 objections on three other occasions in recent years (1985, 1986, and 1989) to efforts by the city to foreclose the use of single-shot voting (through the adoption of numbered positions or staggered terms). It has been alleged that the instant changes were adopted as yet another attempt to undercut the use of the single-shot device. The city avers that it has a justifiable interest in directly electing its mayor. While such an interest certainly is cognizable under the Voting Rights Act, here it appears that reasonable alternatives were available to accomplish this goal without limiting minority voting strength, and we have been provided no convincing nonracial explanation for the city's choice of the instant alternatives.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. See Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.52). In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that your burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the change in the method of electing the at-large councilmembers involving the separate

designation of one seat and the adoption of a majority vote requirement. With respect to the proposed change to a directly elected mayor, no determination will be made since this is directly related to the objectionable changes.

We note that under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed changes have neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. In addition, you may request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the submitted changes continue to be legally unenforceable. Clark v. Roemer, 59 U.S.L.W. 4583 (U.S. June 3, 1991); 28 C.F.R. 51.10 and 51.45.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the City of El Campo plans to take concerning this matter. If you have any questions, you should call Mark A. Posner (202-307-1388), an attorney in the Voting Section.

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

March 9, 1992

Honorable John Hannah, Jr.
Secretary of State
P.O. Box 12060
Austin, Texas 78711-2060

Dear Mr. Secretary:

This refers to Senate Bill No. 1 (1992), which provides the redistricting plan for the Senate of the State of Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your initial submission on January 9, 1992; supplemental information was received on January 10, 1992.

We note that the submitted redistricting plan is substantively identical to the plan resulting from the settlement of state court litigation in October 1991. Quiroz v. Richards, No. C-4395-91F (332nd Jud. Dist. Ct., Hidalgo County, Tex.); Mena v. Richards, No. C-454-91-F (332nd Jud. Dist. Ct., Hidalgo County, Tex.). As you know, that plan received Section 5 preclearance on November 18, 1991. Since then, there have been significant new developments and submission of new information regarding that redistricting plan.

In December 1991, the Texas Supreme Court invalidated the settlement, thereby precluding its further implementation. Terrazas v. Ramirez, No. D-1817, 1991 WL 269035 (Tex. Dec. 17, 1991). One week later, the three-judge federal court in Terrazas v. Slagle, No. 91-CA-426 (W.D. Tex. Dec. 24, 1991) ("Terrazas"), adopted its own interim plan for Senate elections in 1992.

In January 1992, the legislature enacted the submitted Senate redistricting plan, and the state sought to supplant the Terrazas court plan with the enacted plan. The Terrazas court denied the request to stay implementation of the court's plan for the 1992 elections and, in its January 10, 1992 opinion ruled that the enacted plan could not be implemented, even if it were precleared under Section 5, because it "fails to satisfy the Sec. 2 requirements of the Voting Rights Act," op. at 12-13.

We know that the state has appealed the relevant rulings in the Terrazas action, and that the appeal is pending in the United States Supreme Court. On several occasions, however, the Supreme Court has declined to stay the use of the Terrazas court's Senate redistricting plan for the 1992 election. Thus, at this time the extant orders in the Terrazas action preclude the implementation of the submitted redistricting plan for the 1992 election. Moreover, the finding that the submitted plan violates Section 2 would appear to preclude its use thereafter.

Under these circumstances, it is not clear that the state is entitled to invoke Section 5 to obtain either an administrative or judicial determination on the merits of the submitted plan. We recognize that the Supreme Court's decision on the state's appeal in Terrazas may determine whether the submitted plan is capable of implementation. But in view of the statutory time constraints, an administrative determination under Section 5 may not be deferred pending that ruling.

The Voting Rights Act requires that the submitting authority demonstrate that the proposed change has neither a discriminatory purpose nor a discriminatory effect. Georgia v. United States, 411 U.S. 520 (1973); see also Procedures for the Administration of Section 5 (28 C.F.R. 51.52). In addition, preclearance may not be obtained for a voting change that clearly violates Section 2 of the Voting Rights Act, as amended, 42 U.S.C. 1973; 28 C.F.R. 51.55 and 51.56.

In this situation, a federal district court has ruled that the submitted redistricting plan may not be used, in part, because the plan violates Section 2. That ruling, although challenged by the state, has not been vacated or reversed. Accordingly, I cannot conclude, as I must under the Voting Rights Act, that the plan meets the Act's preclearance requirements. Therefore, on behalf of the Attorney General, I must object to the redistricting plan contained in Senate Bill No. 1 (1992).

Of course, as provided by Section 5, the state has the right to seek a declaratory judgment granting preclearance for the submitted redistricting plan from the United States District Court for the District of Columbia. As you are aware, the state has indicated it may do so in the context of the pending preclearance litigation concerning statewide redistricting. Texas v. United States, No. 91-2383 (D.D.C.).

The state also may request that the Attorney General reconsider the objection. In addition, reconsideration at the instance of the Attorney General may be appropriate "[w]here there appears to have been a substantial change in operative fact or relevant law." 28 C.F.R. 51.46(a). However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the submitted redistricting plan for

the Texas Senate continues to be legally unenforceable under Section 5. Clark v. Roemer, 111 S.Ct. 2096 (1991); 28 C.F.R. 51.10 and 51.46.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the State of Texas plans to take concerning this matter. If you have any questions, you should call Steven H. Rosenbaum, Deputy Chief of the Voting Section at (202) 307-3143.

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

March 10, 1992

Honorable John Hannah, Jr.
Secretary of State
P.O. Box 12060
Austin, Texas 78711-2060

Dear Mr. Secretary:

This refers to House Bill No. 2 (1992), which concerns the 1992 primary and general elections and provides for the consolidation of election precincts, nomination of candidates by political party executive committees in the event that a different redistricting plan for either house of the legislature is used for the general election than was used for the primary election, an alternative date for the state and presidential primary election, a candidate filing period for state Senate for such primary, and the rescheduling of deadlines and modification of procedures consistent with the alternative primary date, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your submission on January 10, 1992.

We have carefully considered the information you have provided, as well as information and comments from other interested persons. With regard to the provision authorizing the consolidation of election precincts for the 1992 primary and general elections only (H.B. 2, § 3), the Attorney General does not interpose any objection to the specified change. However, we note that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the change. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41). We also note that the provision for the consolidation of election precincts is viewed as enabling legislation. Therefore, any changes affecting voting, such as the actual consolidation of specific election precincts, which you or others may seek to implement pursuant to this Act would be subject to Section 5 review. See 28 C.F.R. 51.15.

Another provision of H.B. 2, Section 8, addresses the possibility that the 1992 general election for "either house of the legislature" may be held under a redistricting plan different than the plan used for the 1992 primary election. If that circumstance were to occur, Section 8 provides: "if a political party has no nominee for a particular office under the new plan, the political party's appropriate executive committee may nominate a candidate to appear on the general election ballot for that office." Because neither your submission nor the text of this provision explains fully the operation of this provision, we have sought informally to obtain such clarification from the state but have obtained no official, written clarification in response to our inquiries.

It appears that the legislation contemplates that there would not be a new primary election if the state obtained authorization for holding the 1992 general election under a redistricting plan other than the state House and state Senate plans used for today's primary election pursuant to the orders of the three-judge federal court in Terrazas v. Slagle, Nos. 91-CA-425 and 426 (W.D. Tex. Dec. 24, 1991). Instead of a new primary, it appears that the political party nominee for the general election would be either the person chosen in the primary from the comparable district under the court's plan or the person chosen by the party executive committee.

The state has not explained adequately why it would seek to deprive voters of the opportunity to select political party nominees in a new primary if a new redistricting plan for the state House or state Senate is authorized for use in the general election. The effect of such a decision on minority voting strength could be analyzed thoroughly in the context of a specific redistricting plan. The state, however, has chosen to seek Section 5 preclearance for Section 8 now, despite the contingent nature of the provision and regardless of the specific plan that may be involved.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. See Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R 51.52). In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that your burden has been sustained with regard to Section 8 of H.B. 2. Therefore, on behalf of the Attorney General, I must object to the voting changes effected by Section 8.

Of course, as provided by Section 5, the state has the right to seek a declaratory judgment granting preclearance for the submitted change effected by Section 8 from the United States District Court for the District of Columbia. The state also may

request that the Attorney General reconsider the objection. Until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the provisions of Section 8 of H.B. 2 continue to be legally unenforceable. Clark v. Roemer, 111 S.Ct. 2096 (1991); 28 C.F.R. 51.10 and 51.46.

Finally, the provisions of Sections 2, 5, 6 and 7 of H.B. 2 are, by their terms, contingent on the authorization for the state to use the legislatively enacted state Senate redistricting plan (i.e., Senate Bill No. 1 (1992)) for the primary election. The state, however, has been ordered to hold primary elections on March 10, 1992, under the state Senate redistricting plan drawn by the court in Terrazas v. Slagle, No. 91-CA-426 (W.D. Tex.) and has been unsuccessful in its attempts to stay those orders or to obtain authorization to use the S.B. 1 redistricting plan. Nor has the state obtained the requisite preclearance under Section 5 for the S.B. 1 plan. Accordingly, no determination by the Attorney General is required or appropriate concerning these matters. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.25 and 51.35).

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the State of Texas plans to take concerning this matter. If you have any questions, you should call Steven H. Rosenbaum, Deputy Chief of the Voting Section at (202) 307-3143.

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

March 17, 1992

J. Elliott Beck, Esq
Clark, Thomas, Winters, & Newton
P.O. Box 1148
Austin, Texas 78767

Dear Mr. Beck:

This refers to the 1991 redistricting plan for commissioners court districts and the realignment of voting precincts in Gregg County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your response to our request for additional information on January 17, 1992; supplemental information was received on February 12, 1992.

We note at the outset that on February 24, 1992, Gregg County filed an action under Section 5 seeking a declaratory judgment from the United States District Court for the District of Columbia that the proposed change has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. Kenneth J. Walker, et al. v. United States, C.A. No. 92-0480 (D.D.C.) (three-judge court). Pursuant to the direction of Judge Richey at the status conference of March 6, 1992, we are today filing a notice and copy of this determination with the court and providing courtesy copies to the members of the three-judge panel.

We have considered carefully the information you have provided as well as Census data and comments and information from other interested parties. According to the 1990 Census, 18.9 percent of the population of Gregg County is black, and approximately 69 percent of the black population in Gregg County lives in the City of Longview. Under both the existing and proposed redistricting plans for Gregg County, District 4 is the most heavily black commissioner district, with black persons

making up 35.6 percent of the total population in District 4 under the existing plan compared to 37.5 percent of the total population under the proposed plan. It appears that elections have been marked by racially polarized voting and, with the exception of Commissioner James Johnson who was elected in 1990, black voters have not been able to elect candidates of their choice in District 4 or elsewhere in the county.

In addition, the information in your submission does not establish that black voters will have an equal opportunity to elect candidates of their choice in District 4 of your proposed plan. In that regard, we note the longstanding objections by members of the black community in Gregg County to the division of the black population concentrations in the southern portion of the City of Longview between commissioner Districts 1 and 4 and their unsuccessful efforts to persuade the commissioners court to adopt a redistricting plan in 1991 that would unite the majority-black areas in south Longview into one commissioner district which would provide black voters with a significantly more meaningful electoral opportunity. Nothing provided in your submission establishes that the division of the black community in south Longview was justified by any nondiscriminatory redistricting criteria.

Finally, we are not satisfied that the process of formulating the proposed redistricting plan was open to fair participation by members of the minority community. Although the commissioners court held public hearings, the hearings seem to have been a formality to which the commissioners court did not give serious consideration.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. See Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.52). In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that your burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the redistricting plan presently under submission.

You may request that the Attorney General reconsider this objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the proposed redistricting plan continues to be legally unenforceable. Clark v. Roemer, 111 S.Ct. 2096 (1991); 28 C.F.R. 51.10 and 51.45.

The realignment of the voting precincts is directly related to the proposed redistricting; therefore, the Attorney General will make no determination at this time with regard to that change. 28 C.F.R. 51.22(b) and 51.35.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action Gregg County plans to take concerning this matter. If you have any questions, please contact Robert A. Kengle (202-514-6196), an attorney in the Voting Section.

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division

cc: Honorable Charles R. Richey
Honorable Laurence H. Silberman
Honorable Gerhard A. Gesell

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

MAR 17 1992

Michael D. Morrison, Esq.
Guinn & Morrison
Baylor Law School
P.O. Box 97288
Waco, Texas 76798-7288

Dear Mr. Morrison:

This refers to the 1991 redistricting plans for commissioners court districts, and justice of the peace and constable districts; a realignment of precincts; the elimination of six voting precincts; and the establishment of three new polling places and the elimination of nine polling places for Calhoun County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your responses to our request for additional information on December 23, 1991, and January 17, 1992.

We have considered carefully the information you have provided, as well as comments from other interested persons. At the outset, we noted that according to the 1990 Census, Hispanics constitute 36 percent of the county's population and are principally concentrated in the City of Port Lavaca, where about three-quarters of the county's Hispanic population resides. In the proposed redistricting of the commissioners court districts, as well as in the plan for justices of the peace and constables, the Hispanic community in the city is fragmented among four districts (we note that the two plans are identical except that Anglo-majority District 4 in the commissioners court plan is split into two districts in the justice/constable plan). The resulting plan includes one district (District 2) that is majority Hispanic in population and voting age population (59% and 56%, respectively), but the county's registration data indicate that Hispanics would be a minority of the district's registered voters. In light of the apparent pattern of polarized voting in county elections, there is substantial doubt that this district will afford Hispanic voters the opportunity to elect their preferred candidate.

Our review further reveals that during the redistricting process Hispanic leaders indicated that Hispanic voting strength would be more fairly represented by providing that District 1, rather than District 2, be drawn as the Hispanic majority district. Support for this position is found in the fact that during the 1980s there was substantial Anglo growth in District 2 while the Hispanic population declined slightly, and we understand that this demographic change is continuing. In District 1, however, the Hispanic population increased while the Anglo population decreased. During the redistricting process, Hispanic leaders drew the county's attention to these demographic trends and the need for a somewhat larger Hispanic majority than proposed in order to provide Hispanic voters a realistic opportunity to elect their preferred candidate. It appears that the county understood that there were readily available alternatives that would address these concerns, yet the county has not provided any nonracial explanation for their rejection.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. See Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.52). In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that the county's burden has been sustained in this instance with respect to the commissioners court and justice of the peace/constable redistricting plans. Therefore, on behalf of the Attorney General, I must object to these changes.

With respect to the precinct and polling place changes, the Attorney General will make no determination since these changes are directly related to the redistricting plans. 28 C.F.R. 51.35.

We note that under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the objected-to changes have neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. In addition, you may request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the objected-to changes continue to be legally unenforceable. Clark v. Roemer, 111 S. Ct. 2096 (1991); 28 C.F.R. 51.10 and 51.45.

In this regard, we understand that contrary to the express proscription of the Voting Rights Act, the county implemented the unprecleared redistricting plans in the March 10, 1992, primary election. Accordingly, to enable us to meet our responsibility to enforce the Act, please inform us within ten days of the action Calhoun County plans to take concerning these matters. Please contact Mark A. Posner, an attorney in the Voting Section, at (202) 307-1388.

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

MAR 17 1992

Honorable Ray Holbrook
County Judge
Courthouse
Galveston, Texas 77550

Dear Judge Holbrook:

This refers to the 1991 redistricting plan for justice of the peace/constable districts in Galveston County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your response to our request for additional information on January 17, 1992; supplemental information was received on February 24 and March 5, 1992.

We have carefully considered the information you have provided as well as 1990 Census data, and information from other interested parties. The county is divided into eight justice of the peace/constable districts, one of which elects two justices of the peace but only one constable. Although blacks and Hispanics comprise 31.4 percent of the county's population, none of the existing districts contains a majority of black and Hispanic residents.

Our analysis of the process which resulted in the submitted plan shows that minority residents repeatedly pressed for a redistricting that would produce districts in which minorities would have an equal opportunity to elect candidates of their choice. Included in these proposals were plans presented in late August and mid-September, 1991, that would have given District 3 a majority black and Hispanic population. The county rebuffed these efforts with general claims that the existing districts had served the county well and an apparent reluctance to make any significant changes in the districts. However, two weeks later, at the request of an Anglo justice of the peace and constable, the county changed course and adopted a major transfer of territory and population between Districts 3 and 4. The effect of this transfer was to fragment a significant minority community in the City of Hitchcock from nearby minority communities in the cities of La Marque and Texas City. At the same time the county refused to reopen consideration of the changes proposed for District 3 by the minority community.

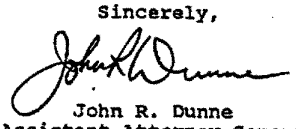
The reasons asserted by the county for its redistricting choices in this area do not withstand Section 5 scrutiny. Although convenience to the public is asserted to have been the principal reason for the change, it appears that persons in the area transferred will have further to travel to the justice court than before. Also, the county's statement that the redistricting will reduce a population disparity between the districts appears to be a post hoc justification, as the county was well aware of population disparities that existed (and will continue to exist under the proposed plan), but exhibited no interest in making any such adjustments in any other areas.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. Georgia v. United States, 411 U.S. 526 (1973); Procedures for the Administration of Section 5, 28 C.F.R. 51.52. In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that your burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the justice of the peace/constable redistricting plan.

We note that under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed change has neither a discriminatory purpose nor effect. 28 C.F.R. 51.44. In addition, you may request that the Attorney General reconsider the objection. See 28 C.F.R. 51.45. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the justice of the peace/constable redistricting plan continues to be legally unenforceable. See Clark v. Roemer, 111 S. Ct. 2096 (1991); 28 C.F.R. 51.10.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action Galveston County plans to take concerning this matter. If you have any questions, you should call George Schneider (202-307-3153), an attorney in the Voting Section.

Sincerely,



John R. Dunne
Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

MAR 2 3 1992

John T. Fleming, Esq.
Henslee, Ryan & Groce
9600 Great Hills Trail
Suite 300 West
Austin, Texas 78759

Dear Mr. Fleming:

This refers to your request that the Attorney General reconsider the December 24, 1991, objection under Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c, to the change in method of election from seven trustees elected at large by numbered positions to five trustees elected from single-member districts and two elected at large, the districting plan, and a change in polling places in District 4 for the Del Valle Independent School District in Travis County, Texas. We received your letter on January 21, 1992.

We have reconsidered our earlier determination in this matter based on the arguments you have advanced in support of your request, along with the other information in our files.

Your request for reconsideration emphasizes our reliance on the trial court's findings in Lopez v. Del Valle Independent School District, No. 475,874, slip op. (D. Travis County, TX May 29, 1991), in which the court found that the existing at-large method of election discriminates against blacks and Hispanics in violation of the Texas Equal Rights Amendment and the state's Equal Protection Clause. Our objection, however, was interposed only after an extensive review of the proposed 5-2 method of election and districting plan, which included not only an analysis of the overall impact of the proposed changes on minority voters, but also an examination of the reasons for and the impact of the legislative choices that were made in arriving at the proposed changes.

As we noted in our letter of December 24, 1991, the proposed plan included only one majority minority district, while several available alternative plans afforded minority voters an opportunity to elect candidates of their choice to at least two trustee positions. These alternative plans were generally favored by the minority community and appeared to more fairly reflect minority voting strength in the school district. While we are mindful that the Voting Rights Act ensures fair election opportunities and does not require that any jurisdiction attempt to guarantee racial or ethnic proportional results, the rejection of these plans has still not satisfactorily been explained in terms of any racially neutral criteria.

With respect to the change in polling place in District 4, you state that the school district was not afforded the opportunity to explain the "reasons for its decision." In this regard, we would direct your attention to our letter of October 21, 1991, where we requested that the school district respond to concerns that "the polling place changes proposed [would] make it more difficult for minority voters, especially those in District 4, to participate in school district elections." Your response to that request was considered fully in reaching our determination.

Because you have not provided any new or additional information relating to the purpose or effect of the submitted changes, I remain unable to conclude that Del Valle Independent School District has carried its burden of showing that the submitted changes have neither a discriminatory purpose nor a discriminatory effect. See Georgia v. United States, 411 U.S. 526 (1973); see also 28 C.F.R. 51.52. Therefore, on behalf of the Attorney General, I must decline to withdraw the objection to the proposed method of election as well as the districting plan, and the polling place change for District 4 for the Del Valle Independent School District.

As we previously noted, you may seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed changes have neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. We remind you, however, that unless and until such a judgment is rendered by that court, the objection by the Attorney General remains in effect and the proposed change is legally unenforceable. Clark v. Roemer, 111 S. Ct. 2096 (1991); 28 C.F.R. 51.10, 51.11, and 51.48(c) and (d).

With regard to the realignment of voting precincts, the remaining polling place changes and the implementation schedule, it is apparent that these changes are directly related to the change in the method of election and the districting plan. Since these changes are dependent upon the objected-to changes, the Attorney General is unable to make a final determination with the respect to them at this time. 28 C.F.R. 51.22 (b).

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action Del Valle Independent School District plans to take with respect to this matter. If you have any questions, feel free to call Richard Jerome (202-514-8696), an attorney in the Voting Section.

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

March 30, 1992

Bob Bass, Esq.
Allison & Associates
208 West 14th Street
Austin, Texas 78701

Dear Mr. Bass:

This refers to the 1991 redistricting plan for commissioners court districts, the renumbering of voting precincts, realignment of voting precincts, the elimination of a voting precinct and the polling place therefor, and two polling place changes for Castro County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your responses to our request for additional information on January 30 and March 5 and 13, 1992.

We have considered carefully the information you have provided, as well as comments from other interested persons. At the outset, we note that according to the 1990 Census, Hispanics constitute 46% of the county's population and are principally concentrated in the City of Dimmitt and the Town of Hart. We also note that a significant number of Hispanic residents in the county are noncitizens and not eligible to vote. We have identified two specific areas of migrant farmworker housing, Azteca Apartments and the Coronado Acres subdivision, where we understand there are concentrations of Hispanic persons who are not eligible to vote.

In the proposed redistricting of the commissioners court districts, the county has proposed a plan with two majority-minority districts. District 1 is 58% Hispanic and includes the entire town of Hart and the southeast quadrant of the county, but no part of Dimmitt. District 3 is 65% Hispanic, and includes part of Dimmitt and the two migrant housing developments noted above. While these two districts are majority Hispanic in population and voting age population (51% and 56% respectively), further information indicates that Hispanics who are eligible to vote would be in the minority in both districts. In light of the

apparent pattern of polarized voting in county elections, it would not appear that either of these districts will afford Hispanic voters the opportunity to elect their preferred candidates.

We understand that during the redistricting process several alternatives were presented and rejected and that, in the course of the redistricting debate, representatives for the minority community urged the county to create one or two districts with populations greater than 70% Hispanic so that Hispanic voters would have a realistic opportunity to elect their candidates of choice. While we recognize that it may not be possible to draw two districts which would afford minority voters such an opportunity, given the large noncitizen population in the county, the county has not provided any nonracial explanation for its failure to adopt a plan which includes at least one viable Hispanic district.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. Georgia v. United States, 411 U.S. 526 (1973); Procedures for the Administration of Section 5, 28 C.F.R. 51.52. In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that your burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the 1991 redistricting plan for county commissioner districts.

We note that under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed changes have neither a discriminatory purpose nor a discriminatory effect. 28 C.F.R. 51.44. In addition, you may request that the Attorney General reconsider the objection. See 28 C.F.R. 51.45. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the redistricting plan continues to be legally unenforceable. See Clark v. Roemer, 111 S. Ct. 2096 (1991); 28 C.F.R. 51.10.

Because the voting precinct and polling place changes are dependent upon the objected-to redistricting, the Attorney General will make no determination with regard to them. See 28 C.F.R. 51.22.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action Castro County plans to take concerning this matter. If you have any questions, you should call Richard Jerome (202-514-8696), an attorney in the Voting Section.

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

March 30, 1992

James E. Nelson, Esq.
Schafer, Davis, McCollum,
Ashley, O'Leary & Stoker
P. O. Drawer 1552
Odessa, Texas 79760-1552

Dear Mr. Nelson:

This refers to the 1991 redistricting plan for trustee districts and a polling place change for the Monahans-Wickett-Pyote Independent School District in Ward County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your response to our request for additional information on January 28, 1992.

We have carefully considered the information you have provided as well as 1980 and 1990 Census data and information from other interested parties. According to our information, the board of trustees is composed of seven members; two are elected at large and five are elected from single-member districts. Hispanics comprise 34.5 percent of the school district population, and the school district has conceded that racial bloc voting characterizes school district elections.

The proposed plan appears to be virtually the equivalent of the existing plan in the extent to which it affords minorities in the district an equal opportunity to elect candidates of their choice. Thus, even though 1990 Census data reflect a significant increase over 1980 Census data in the Hispanic population, in both the existing plan, which was drawn on the basis of 1980 data, and the proposed plan, there is only one district, District 3, in which Hispanics constitute a majority of the total population.

Indeed, it appears that no attempt was made to acknowledge the increased Hispanic voting strength and, from the onset of the redistricting process, the school district identified retention of the one Hispanic district as part of its redistricting criteria. In accomplishing this result, the proposed plan appears unnecessarily to have fragmented Hispanic population in the City of Monahans. Our examination of minority concentrations in Monahans shows that elimination of such fragmentation could result in a second majority Hispanic district, despite the school district's demographer's statement to the contrary.

In addition, the school district appears to have avoided public participation in the redistricting effort as much as possible. The demographer developed the plan without even visiting the community, the school district neither invited nor arranged for any citizen participation, and decisions relating to the plan were made at school board meetings the notices for which were published only in English. Although the Voting Rights Act litigation that produced the existing method of election and districting plan had only recently been concluded, the school district's redistricting procedures seem to have been calculated to avoid participation in the process by the minority plaintiffs or their attorney. As a result, the school district succeeded in freezing in place a plan that does not appear fairly to reflect minority voting strength in the school district.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. Georgia v. United States, 411 U.S. 526 (1973); Procedures for the Administration of Section 5, 28 C.F.R. 51.52. In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that your burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the redistricting plan.

We note that under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed change has neither a discriminatory purpose nor effect. 28 C.F.R. 51.44. In addition, you may request that the Attorney General reconsider the objection. See 28 C.F.R. 51.45. However, until the objection is withdrawn or a judgment from the District of

Columbia Court is obtained, the redistricting plan continues to be legally unenforceable. See Clark v. Roemer, 111 S. Ct. 2096 (1991); 28 C.F.R. 51.10.

Because the polling place change is dependent upon the objected-to redistricting, the Attorney General will make no determination with regard to this change. See 28 C.F.R. 51.22.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the Monahans-Wickett-Pyote Independent School District plans to take concerning this matter. If you have any questions, you should call Nancy Sardeson (202-307-3153), an attorney in the Voting Section.

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

MAR 30 1992

Michael Morrison, Esq.
Guinn & Morrison
Baylor Law School
P.O. Box 97288
Waco, Texas 76798-7288

Dear Mr. Morrison:

This refers to the 1991 redistricting plan for commissioner court districts, the reduction in the number of justices of the peace and constables from five to four and the districting plan, the realignment of voting precincts, the establishment of fourteen new voting precincts and seven polling places, four consolidations of voting precincts and the designation of polling places therefor, and seven polling place changes, in Ellis County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your response to our request for additional information on January 29 and February 4, 1992; supplemental information was received on February 19 and March 5 and 6, 1992.

We have carefully considered the information you have provided as well as 1990 Census data and information from other interested parties. According to our information, the proposed commissioners court plan was one of many that was considered during the redistricting process. Although the proposed plan is not retrogressive of minority voting strength, most of the alternative plans that were considered provided for significantly greater increases in the minority percentage in one district. Some alternatives provided for a district with a majority of Hispanic and black population. We are unable to conclude that the county has provided sufficient nonracial reasons for its failure to adopt one of these alternatives.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. Georgia v. United States, 411 U.S. 526 (1973); Procedures for the Administration of Section 5, 28 C.F.R. 51.52. In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that your burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the commissioners court redistricting plan.

We note that under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed change has neither a discriminatory purpose nor effect. 28 C.F.R. 51.44. In addition, you may request that the Attorney General reconsider the objection. See 28 C.F.R. 51.45. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the commissioners redistricting plan continues to be legally unenforceable. See Clark v. Roemer, 111 S. Ct. 2096 (1991); 28 C.F.R. 51.10.

The Attorney General does not interpose any objection to the remaining specified changes. However, we note that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the changes. In addition, as authorized by Section 5, we reserve the right to reexamine this submission if additional information that would otherwise require an objection comes to our attention during the remainder of the sixty-day review period. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41 and 51.43).

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action Ellis County plans to take concerning this matter. If you have any questions, you should call George Schneider (202-307-3153), an attorney in the Voting Section.

Since the Section 5 status of these changes has been placed at issue in Gant v. Ellis County Commissioners' Court, No. 3-92CV0395-D (N.D. Tex.), we are providing a copy of this letter to the court in that case.

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division

T. 3/30/92
JRD:MAP:JVJ:gmh
DJ 166-012-3
91-3910

March 30, 1992

Brian P. Quinn, Esq.
McWhorter, Cobb and Johnson
P.O. Box 2547
Lubbock, Texas 79408

Dear Mr. Quinn:

This refers to the 1991 redistricting plan for the Lubbock Independent School District in Lubbock County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received the information to complete your submission on January 28 and 29, 1992.

We have given careful consideration to the information you have provided, as well as the comments and information from other interested persons. At the outset, we note that minorities constitute 31.4 percent of the school district population (22.9% Hispanic and 8.5% black), and that pursuant to the five district, two at-large method of election, there presently are two minority trustees, both elected from single-member districts in which Hispanics and blacks constitute a majority of the population. Our analysis indicates that Hispanic and black voters generally form a cohesive electoral coalition, and that Anglos provide little support for candidates of the minority community's choice.

While the proposed redistricting maintains the minority percentages in majority-minority District 1, it effects a substantial decrease in majority-minority District 2, from 75 to 63 percent of the population (the Hispanic and black populations each decrease by six percentage points). This results from the school district's decision to correct the underpopulation of existing District 2 by adding two precincts that are

cc: Public File

overwhelmingly Anglo in population. The school district advises that this will safeguard the opportunity of black voters to elect a candidate of their choice in the district since they are more likely to coalesce with Anglo than Hispanic voters in school district elections. However, we find little or no support for this view in the recent election history of the county, and it appears that there are a number of alternative plans available that would minimize the reduction of minority voting strength in this district. We also note that while the minority percentage in proposed District 2 still exceeds the percentage in proposed District 1, the Hispanic proportion of the electorate is significantly greater in District 1 since we understand that it includes a substantial number of Anglo university students who generally do not participate in school district elections.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. See Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.52). In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that the school district's burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the proposed redistricting plan.

We note that under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the redistricting plan has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. In addition, you may request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the redistricting plan continues to be legally unenforceable. Clark v. Roemer, 111 S. Ct. 2096 (1991); 28 C.F.R. 51.10 and 51.45.

To enable us to meet our responsibilities under the Voting Rights Act, please inform us of the action the Lubbock Independent School District plans to take concerning this matter. If you have any questions, you should call Mark A. Posner (202-307-1388), an attorney in the Voting Section.

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

April 6, 1992

Robert T. Bass, Esq.
Allison & Associates
208 West 14th Street
Austin, Texas 78701

Dear Mr. Bass:

This refers to the 1991 redistricting plan for the commissioners court, the redistricting plan for the justice of the peace/constable districts, the elimination of three polling places, and the realignment of voting precincts for Terrell County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your response to our December 30, 1991, request for additional information on February 5, 1992.

We have carefully considered the information you have provided, as well as 1990 Census data and information from other interested parties. With regard to the redistricting plan for the justice of the peace/constable districts, the Attorney General does not interpose any objection to the specified change. However, we note that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the change. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41).

We are unable to reach the same conclusion regarding the redistricting plan for the commissioners court. We note that between 1980 and 1990 the Hispanic share of Terrell County's population increased by ten percentage points, from 43.3 percent to 53.3 percent. Under the existing districting plan, Hispanics constitute a significant majority of the population in two districts, District 1 (71.8%) and District 2 (79.8%). The

proposed redistricting plan, however, reduces the Hispanic population proportion in District 1 nearly nine percentage points (to 63%), while increasing the Hispanic population proportion four percentage points in District 2 (to 83.9%). In doing so, the plan fragments the county's Hispanic population among Districts 1, 2 and 4, and shifts politically active Hispanics from District 1 to District 2 and from District 2 into District 4.

Although the 1990 Census reveals that District 1 in the existing plan is overpopulated and that Districts 2 and 4 are underpopulated, our examination of county demography indicates that one-person, one-vote requirements could have been satisfied without reducing the Hispanic share of the population in District 1. Moreover, our analysis of recent elections indicates that the proposed plan's reduction in the Hispanic share of the population in District 1 would appear to lessen the opportunity for Hispanics to elect representatives of their choice. Beer v. United States, 425 U.S. 130 (1976). The county has failed to provide an adequate nonracial explanation for its redistricting decisions concerning the redistricting plan for the commissioners court.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. See Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.52). In view of the concerns noted above, however, I am unable to conclude, as I must under the Act, that the county has carried its burden with regard to the submitted change. Accordingly I must, on behalf of the Attorney General, interpose an objection to the proposed redistricting plan for the commissioners court in Terrell County.

We note that under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed change has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color or membership in a language minority group. In addition, you may request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the redistricting plan for the commissioners districts continues to be legally unenforceable. Clark v. Roemer, 111 S. Ct. 2096 (1991); 28 C.F.R. 51.10 and 51.45.

Because the elimination of the three polling places and the realignment of voting precincts are dependent upon the objected-to redistricting plan, the Attorney General will make no determination with regard to them. 28 C.F.R. 51.22(b) and 51.35.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action Terrell County plans to take concerning this matter. If you have any questions, you should call Richard B. Jerome (202-514-8696), an attorney in the Voting Section.

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General *Washington, D.C. 20530*

April 6, 1992

Honorable Marilyn Cox
Bailey County Judge
300 South 1st Street
Muleshoe, Texas 79347

Dear Judge Cox:

This refers to the 1991 redistricting plans for commissioners court and justice of the peace/constable districts, the realignment of voting precincts, and a polling place change in Bailey County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your response to our January 30, 1992, letter on February 6, 1992.

We have carefully considered the information you have provided, as well as 1990 Census data and information from other interested parties. We note that between 1980 and 1990 the Hispanic share of Bailey County's population increased from 33.9 to 38.8 percent. Nevertheless, the Hispanic share of the population in District 4, the only district with a Hispanic population majority, decreases from 69.3 percent under the existing plan to 64.2 percent under the proposed plans.

We recognize that the 1990 Census revealed that District 4 was underpopulated. Our review of the county's demography reveals, however, that a five percentage point reduction in the Hispanic share of the population in District 4 was not necessary to comply with the one person, one vote requirement of the United States Constitution. Moreover, in light of the existing Hispanic registration levels in the county and District 4 in particular and our analysis of the results of the 1990 primary election involving an unsuccessful Hispanic candidate, the proposed plans' reduction in the Hispanic share of the population in District 4 would appear to lessen the opportunity for Hispanics to elect representatives of their choice. See Beer v. United States, 425 U.S. 130 (1976).

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. Georgia v. United States, 411 U.S. 526 (1973); Procedures for the Administration of Section 5, 28 C.F.R. 51.52. In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that your burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the 1991 redistricting plans for county commissioner and justice of the peace/constable districts.

We note that under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed changes have neither a discriminatory purpose nor effect. 28 C.F.R. 51.44. In addition, you may request that the Attorney General reconsider the objection. See 28 C.F.R. 51.45. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the redistricting plans continue to be legally unenforceable. See Clark v. Roemer, 111 S. Ct. 2096 (1991); 28 C.F.R. 51.10.

Because the voting precinct realignment and polling place change are dependent upon the objected-to redistricting plans, the Attorney General will make no determination with regard to them. See 28 C.F.R. 51.22.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action Bailey County plans to take concerning this matter. If you have any questions, you should call George Schneider (202-307-3153), an attorney in the Voting Section.

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

April 6, 1992

Robert T. Bass, Esq.
Allison & Associates
208 West 14th Street
Austin, Texas 78701

Dear Mr. Bass:

This refers to the 1991 redistricting plan for commissioners court districts and the realignment of voting precincts in Cochran County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your responses to our request for additional information on February 6 and March 19, 1992.

We have considered carefully the information you have provided, as well as 1990 Census data and information from other interested persons. According to the 1990 Census, Hispanics constitute 42.4 percent of the county's total population and 36.1 percent of its voting age population. The existing commissioner districts were drawn based upon 1970 Census data, which showed that 28.4 percent of the total population in Cochran County was Hispanic. Thus, there has been a substantial increase in Cochran County's Hispanic population since the Census upon which the existing plan was based.

Approximately three-quarters of the county's Hispanic residents are concentrated in the town of Morton. Under the existing district boundaries this concentration of Hispanic population in Morton is divided among several districts so that in District 4, the only district with a Hispanic population majority, Hispanics make up 58.6 percent of the total population and 51.2 percent of the voting age population according to the 1990 Census. Your submission included a report prepared by Allison and Associates, which stated that "[t]here does appear to

be some fragmentation of minority population in the Town [of] Morton which should be addressed when bringing the population balance of [District] No. 4 into compliance."

Notwithstanding this advice, the proposed redistricting plan continues significantly to divide the Hispanic community in Morton, resulting in a reduction in the Hispanic share of the population in District 4 of nearly two percentage points (to 56.7%). The county has failed adequately to explain this reduction in the Hispanic population percentage of the proposed plan's most heavily Hispanic district. Indeed, our analysis of the county's demography indicates that such a reduction was unnecessary to satisfy legitimate redistricting criteria.

In this regard, we note that the county commissioners considered and rejected two alternative plans prepared by its consultant. Both of these plans, in addition to the proposed redistricting plan, appear to have imposed a 65 percent ceiling on total minority population within each district. In light of the county's demography, the lower rates of political participation among Hispanics acknowledged in your submission and the apparent polarization in voting in the county, we do not believe such an approach to redistricting has been justified.

Finally, concerns have been raised about the nature and extent of minority participation in the county's redistricting process. In particular, it does not appear that the county's initial redistricting discussions were publicized or that the county made any direct effort to notify and involve the minority community in the redistricting process until a proposed plan was already prepared.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. See Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.52). In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that the county's burden has been sustained in this instance with respect to the commissioners court redistricting plan. Therefore, on behalf of the Attorney General, I must object to these changes.

Because the realignment of the voting precincts is directly related to the objected-to redistricting plan, the Attorney General will make no determination at this time with regard to that matter. 28 C.F.R. 51.22(b).

We note that under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the objected-to change has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. In addition, you may request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the objected-to changes continue to be legally unenforceable. Clark v. Roemer, 111 S. Ct. 2096 (1991); 28 C.F.R. 51.10 and 51.45.

To enable us to meet our responsibility to enforce the Act, please inform us of the action Cochran County plans to take concerning this matter. If you have any questions, you should call Robert A. Kengle, an attorney in the Voting Section, at (202) 514-6196.

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

APR 10 1992

Robert T. Bass, Esq.
Allison & Associates
208 West 14th Street
Austin, Texas 78701

Dear Mr. Bass:

This refers to the 1991 redistricting plan for the commissioners court, and the realignment and renumbering of voting precincts for Hale County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your responses to our request for additional information on February 10 and March 25, 1992; other supplemental information was received on March 6 and 30, 1992.

We have considered carefully the information you have provided, as well as information from other interested persons. As documented by the 1980 and 1990 Censuses, the Hispanic share of the county population rose substantially in the past decade, from 34 percent in 1980 to 42 percent in 1990. This increase similarly was reflected in the existing commissioners court districts. In particular, the Hispanic proportion in District 2 increased from a bare Hispanic majority of 54 percent to 67 percent, giving Hispanic voters a significant opportunity to elect a candidate of their choice to the commissioners court.

The proposed plan reduces the Hispanic population percentage in District 2 by nine percentage points (to 58%) while it increases the Hispanic share of the population in District 1 from 42 to 57 percent. The registration data compiled by the State of Texas reveal that Hispanics would not constitute a majority of the registered voters in either district in the new plan. On the other hand, the data show that Hispanics are nearly a majority of the registered voters in existing District 2.

Our analysis indicates that the malapportionment in the existing commissioners court districts may be remedied with little or no reduction in the Hispanic percentage in District 2 and with no meaningful alteration to the districting configuration selected by the county. This may be accomplished principally by minimizing the proposed plan's fragmentation of the Hispanic population in Plainview between Districts 1 and 2. It also appears that such a plan would continue to provide Hispanic voters the opportunity to exert a substantial influence in District 1 elections. In light of the apparent pattern of polarized voting in local elections, the proposed plan would appear to "lead to a retrogression in the position of ... minorities with respect to their effective exercise of the electoral franchise." Beer v. United States, 425 U.S. 130, 141 (1976). In addition, the county has failed to provide an adequate nonracial explanation for its redistricting decisions.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. See Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.52). In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that the county's burden has been sustained in this instance with respect to the commissioners court redistricting plan. Therefore, on behalf of the Attorney General, I must object to this change.

Because the realignment and renumbering of the voting precincts are directly related to the objected-to redistricting plan, the Attorney General will make no determination at this time with regard to these matters. 28 C.F.R. 51.22(b).

We note that under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the objected-to change has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. In addition, you may request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the proposed redistricting plan continues to be legally unenforceable. Clark v. Roemer, 111 S. Ct. 2096 (1991); 28 C.F.R. 51.10 and 51.45.

To enable us to meet our responsibility to enforce the Act, please inform us of the action Hale County plans to take concerning this matter. If you have any questions, you should call Mark A. Posner, an attorney in the Voting Section, at (202) 307-1388.

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

April 10, 1992

Robert T. Bass, Esq.
Allison & Associates
208 West 14th Street
Austin, Texas 78701

Dear Mr. Bass:

This refers to the 1991 redistricting plan for the commissioners court and the realignment of voting precincts for Deaf Smith County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your responses to our request for additional information on February 10, March 23, and March 26, 1992.

We have considered carefully the information you have provided, as well as information from other interested persons. According to the 1990 Census, Hispanics constitute 49 percent of the county's population and are principally concentrated in the City of Hereford. In the proposed redistricting plan, the county divides the Hispanic population in Hereford among three districts. In light of the apparent polarization in voting, Hispanic voters appear to have an opportunity to elect a candidate of their choice only in one district. That district, District 2, is 69.0 percent Hispanic in population in the existing plan and is increased to 69.8 percent Hispanic in the proposed plan. In 1990, the district elected the first Hispanic commissioner in modern times, after unsuccessful Hispanic candidacies in 1982 and 1986 in the district.

The remainder of Hereford's Hispanic population is divided between proposed Districts 1 and 4 which are 60.5 percent and 49.0 percent Hispanic, respectively. The county's registration data suggest that Hispanics will not have a registration majority

in either district, although they would approach that level in District 1. We note that Hispanic candidates have run unsuccessfully in that district in the past three elections, including most recently the 1992 Democratic primary where the county implemented the proposed plan contrary to the requirements of Section 5. Clark v. Roemer, 111 S.Ct. 2096 (1991).

It appears that the Hispanic population percentage in District 1 could have been increased (by several percentage points) to allow Hispanic voters the opportunity to elect a candidate of their choice in this district by reducing the fragmentation of the Hispanic population in north Hereford between Districts 1, 2, and 4. In this regard, we note that the county's submission indicates that it was fully aware of the fragmentation occasioned by the proposed plan. Nevertheless, the county has failed adequatly to justify its districting decisions in this regard.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. See Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.52). In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that the county's burden has been sustained in this instance with respect to the commissioners court redistricting plan. Therefore, on behalf of the Attorney General, I must object to this change.

Because the precinct realignment is directly related to the objected-to redistricting plan, the Attorney General will make no determination at this time with regard to this matter. 28 C.F.R. 51.22(b).

We note that under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the objected-to change has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. In addition, you may request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the proposed redistricting plan continues to be legally unenforceable. Clark v. Roemer, supra; 28 C.F.R. 51.10 and 51.45.

To enable us to meet our responsibility to enforce the Act, please inform us of the action Deaf Smith County plans to take concerning this matter. If you have any questions, you should call Mark A. Posner, an attorney in the Voting Section, at (202) 307-1388.

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division

U.S. Department of Justice
Civil Rights Division

Office of the Assistant Attorney General
Washington, D.C. 20530

July 6, 1992

Robert T. Bass, Esq.
Allison & Associates
208 West 14th Street
Austin, Texas 78701

Dear Mr. Bass:

This refers to your May 1, 1992, requests that the Attorney General reconsider the objections interposed under Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c, to the 1991 redistricting plans for the commissioners courts in Castro, Cochran, Deaf Smith, Hale, and Terrell Counties, Texas and the redistricting plan for the commissioners court and for justices of the peace and constables in Bailey County, Texas. We received your requests on May 4, 1992.

As you are aware, the redistricting plans for these Texas counties were separately submitted for Section 5 review and were the subject of separate Section 5 determination letters. The instant reconsideration requests, however, are identical and accordingly we are responding to all the requests by this letter. The requests allege that the Attorney General applied an improper standard in interposing these Section 5 objections and indicate that supporting information will be provided after the Department responds to the Freedom of Information Act requests that have been filed with regard to the Department records associated with the objections. In this regard, we note that we currently are processing the FOIA requests and should respond to all the requests shortly. The reconsideration requests otherwise do not offer any specific reasons why the objection analyses may have been flawed or present any data or other information to support withdrawal of the objections.

Section 51.48 of the Procedures for the Administration of Section 5 specifies that "[t]he objection shall be withdrawn if the Attorney General is satisfied that the change does not have the purpose or effect of discriminating on account of race, color, or membership in a language minority group." See also Georgia v. United States, 411 U.S. 526 (1973); 28 C.F.R. 51.52. The instant requests do not establish any basis for concluding that the counties have met their burden in this regard, and our review of the objections indicates that we applied the statutory standards contained in Section 5 in interposing the objections. Accordingly, on behalf on the Attorney General, I decline to withdraw the objections to the commissioners court redistricting plans for Castro, Cochran, Deaf Smith, Hale, and Terrell Counties, Texas, and the objection to the redistricting plan for the commissioners court and for justices of the peace and constables for Bailey County, Texas.

As previously noted in the objection letters, Section 5 provides that the counties may seek a declaratory judgment from the United States District Court for the District of Columbia that the objected-to changes have neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. In addition, the counties may at any time renew their requests that the Attorney General reconsider the objections. 28 C.F.R. 51.45.

We wish to emphasize, however, that unless and until the objections are withdrawn or a judgment from the District of Columbia Court is obtained, the redistricting plans to which objections have been interposed are legally unenforceable. Clark v. Roemer, 111 S. Ct. 2096 (1991); 28 C.F.R. 51.10 and 51.45. We note that each of the counties requesting reconsideration implemented its unprecleared 1991 plan in the 1992 primary election, contrary to the express requirement of Section 5 that no voting change may be implemented without first obtaining Section 5 preclearance either from the Attorney General or the District Court for the District of Columbia.

Accordingly, to enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action that Bailey, Castro, Cochran, Deaf Smith, Hale, and Terrell Counties plan to take to place themselves in compliance

with the Act. If you have any questions, you should call Mark A. Posner, Section 5 Special Counsel in the Voting Section, at (202) 307-1388.

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

July 14, 1992

Robert T. Bass, Esq.
Allison & Associates
208 West 14th Street
Austin, Texas 78701

Dear Mr. Bass:

This refers to the 1991 redistricting plan for commissioners court districts and the realignment of voting precincts in Gaines County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your further response to our December 23, 1991, request for additional information on May 15, 1992.

We have considered carefully the information you have provided, as well as data from the 1990 Census and information from other interested parties. The commissioners court is composed of five members, four of whom are elected from single-member districts and the fifth member, the county judge, is elected at large.

Although Gaines County is nearly 29 percent Hispanic in voting age population, in each district in the proposed plan white residents constitute a majority of the voting age population. This result has been achieved by fragmenting Hispanic population concentrations in the cities of Seagraves and Seminole. At the time of redistricting the county was aware that it was possible to draw a district with a Hispanic voting age population majority but rejected the one alternative its demographer drew and failed to develop other such options that did not have the asserted defects of that plan. The reasons for rejecting a redistricting approach that would produce one Hispanic voting age population majority district do not withstand scrutiny. Moreover, the fact that a Hispanic challenger forced a runoff in the 1990 election in the most-heavily Hispanic district

(40% Hispanic in population) suggests that the real concern may well have been the fact that providing a majority Hispanic voting age population district would produce a real opportunity for Hispanics to elect a candidate of their choice.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. See Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.52). In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that your burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the commissioners court redistricting plan.

We note that under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed change has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. In addition, you may request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the redistricting plan continues to be legally unenforceable. Clark v. Roemer, 111 S.Ct. 2096 (1991); 28 C.F.R. 51.10 and 51.45.

Because the realignment of voting precincts is dependent upon the objected-to redistricting, the Attorney General will make no determination at this time with regard to this matter. 28 C.F.R. 51.22(b).

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action Gaines County plans to take concerning this matter. If you have any questions, you should call George Schneider (202-307-3153), an attorney in the Voting Section.

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

July 20, 1992

Honorable Preston Parks
Mayor
128 North Dallas Avenue
Wilmer, Texas 75172

Dear Mayor Parks:

This refers to the adoption of numbered positions for the election of councilmembers in the City of Wilmer, Dallas County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your response to our request for additional information on May 19 and 20, 1992.

We have considered carefully the information you have provided as well as comments from other interested parties. The 1990 Census reports that Hispanics constitute 30.3 percent while blacks constitute 20.9 percent of the city's population. Review of Census data demonstrates that these figures represent significant increases in the population of each minority group in the city since 1980. The information available to us indicates that no minority person has ever served on the city council and that minority candidates who have sought city office have been unsuccessful, in large part as a result of racially polarized voting.

It is well recognized that where a jurisdiction has a significant minority population and a pattern of polarized voting exists, the addition of numbered positions to an at-large election system with a majority vote requirement may further limit the opportunity of minority citizens to elect candidates of their choice to office. See, e.g., City of Rome v. United States, 446 U.S. 156, 183-185 (1980). Numbered positions serve to generate head-to-head election contests, and, thus, where elections are characterized by voting along racial or ethnic lines, they act to preclude minority voters from utilizing the election device of single-shot voting.

We understand that the city adopted numbered positions primarily in response to requests by some minority residents to create an opportunity for minority voters, but, based on the information available to us, it appears that the use of numbered positions will make it less likely that minority voters will be able to elect candidates of their choice to the city council. Under these circumstances, then, we cannot say that the city has demonstrated that the use of numbered positions will not "lead to a retrogression in the position of . . . minorities with respect to their effective exercise of the electoral franchise." Beer v. United States, 425 U.S. 130, 141 (1976).

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. See Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.52). In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that the city's burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the use of numbered positions for city council elections.

We note that under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the use of numbered positions has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. In addition, you may request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the use of numbered positions continues to be legally unenforceable. Clark v. Roemer, 111 S. Ct. 2096 (1991); 28 C.F.R. 51.10 and 51.45.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the City of Wilmer plans to take concerning this matter. If you have any questions, you should call Lora L. Tredway (202-307-2290), an attorney in the Voting Section.

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division

U.S. Department of

Civil Rights Division

JRD:GS:CGM:gmh
DJ 166-012-3
91-4250

Voting Section
P.O. Box 66128
Washington, D.C. 20035-6128

July 29, 1992

Michael Morrison, Esq.
Guinn & Morrison
Baylor Law School
P. O. Box 97288
Waco, Texas 76798-7288

Dear Mr. Morrison:

This refers to your request that the Attorney General reconsider the March 30, 1992, objection interposed under Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c, to the redistricting plan for the commissioners court in Ellis County, Texas. We received your request on May 30, 1992.

In your subsequent June 3, 1992, letter, Ellis County withdrew its request for reconsideration. Accordingly, as we previously have informed you, the Attorney General will not take any action on the reconsideration request and the Section 5 objection remains in force.

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division

By: Delores J. Kenebrew

for Steven H. Rosenbaum
Chief, Voting Section

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

July 31, 1992

John T. Fleming, Esq.
Henslee, Ryan & Groce
9600 Great Hills Trail
Suite 300 West
Austin, Texas 78759

Dear Mr. Fleming:

This refers to the interim change in method of election from seven members elected at large by numbered positions to six elected from single-member districts and one elected at large, the districting plan, implementation schedule, polling place changes, a majority vote requirement, a precinct realignment, creation of a voting precinct, and a change in the method of selecting the president of the board of trustees for the Del Valle Independent School District in Travis County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your response to our request for additional information on June 1, and July 28, 1992.

On June 1, 1992, we received your May 28, 1992, letter, which enclosed a new map of district boundaries for the six single-member districting plan and demographic data, including a new Census tract and block list, prepared by plaintiffs in Lopez v. Del Valle Independent School District, No. 475,874 (D. Travis County, Tx.). The new district map is different than the map submitted on February 25, 1992. We understand that at least some of these changes reflect revisions to the plan made by the court in Lopez, and that the map submitted on June 1, 1992, represents the districting plan implemented in the May 2, 1992, election. Your correspondence indicates that the school district no longer wishes to implement the districting plan initially submitted. Accordingly, no determination by the Attorney General is required concerning that districting plan submitted on February 25, 1992. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.25 and 51.35). Instead, we have reviewed the districting plan submitted on June 1, 1992.

We have carefully analyzed the proposed changes and the information you have provided, as well as Census data and information and comments from other interested persons. According to the 1990 Census, black and Hispanic residents constitute 44.3 percent of the school district's population. We also note that the map of the districting plan submitted on June 1, 1992, and the demographic data provided on the same date do not correspond. Our estimates of the population data for the submitted districting plan reveal a total population deviation among the districts of approximately 38 percent.

We are mindful that the voting changes you have submitted for Section 5 review are intended to remedy the concerns expressed in our December 24, 1991, objection to a method of election with five single-member districts and two at-large seats and a districting plan proposed by the school district. Our objection letter noted that, in the context of the racial bloc voting apparent in the school district, the plan provided blacks and Hispanics a realistic opportunity to elect only one school board trustee out of seven, even though available alternative plans afforded minorities an opportunity to elect at least two trustees. The decision to maintain two at-large positions also raised concerns that the proposed changes were intended to minimize minority voting strength.

Analysis of the plan now under review reveals that it, too, contains only one district in which blacks and Hispanics have a realistic opportunity to elect their chosen representatives. The submitted plan also maintains an at-large position that would appear to be out of reach for minority voters. While the lack of accurate demographic data for the submitted plan makes our review more difficult, our analysis indicates that only District 1 has a majority of blacks and Hispanics of voting age. Serious concerns have been raised as to whether minority voters in any of the other districts will have an opportunity to elect their preferred candidates. Moreover, it appears that after our earlier objection, the board refused to consider alternative plans providing for two viable minority districts.

With respect to the majority vote requirement for the at-large position on the board of trustees, it is generally well established that a majority vote requirement in an at-large context enhances the opportunity for discrimination against minority voters. See, e.g. City of Port Arthur v. United States, 459 U.S. 159 (1982); Senate Report No. 417, 97th Congress, 2nd Session 6 (1982). It appears that imposition of a majority vote requirement in Del Valle Independent School District would make it more difficult for minority voters to elect candidates of their choice to the at-large position and the school district has presented us with nothing to show that this would not be the case.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of demonstrating that proposed changes do not have a racially discriminatory purpose or effect. Georgia v. United States, 411 U.S. 526 (1973). In light of the information available to us, and given the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that the school district's burden has been sustained in this instance. Accordingly, on behalf of the Attorney General, I must object to the proposed method of election, the districting plan, and the majority vote requirement as it applies to the at-large position on the board of trustees for the Del Valle Independent School District.

We note that under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that these changes have neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. In addition, you may request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the method of election, districting plan and the majority vote requirement as applied to the at-large position on the board of trustees continue to be legally unenforceable. Clark v. Roemer, 111 S. Ct. 2096 (1991); 28 C.F.R. 51.10 and 51.45.

The remaining changes are directly related to the change in the method of election and the districting plan. Accordingly, the Attorney General is also unable to make any determination regarding these changes under Section 5 at this time. See also 28 C.F.R. 51.22(b) and 51.35.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the Del Valle Independent School District plans to take concerning these matters. If you have any questions, you should call Richard Jerome (202-514-8696), an attorney in the Voting Section.

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division

U.S. Department Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

August 17, 1992

Ms. Frances Vesley
City Secretary
P. O. Box 264
Ganado, Texas 77962

Dear Ms. Vesley:

This refers to the procedures for conducting the January 18, 1992, special election; the change in form of government from a Type C (commission) to Type A (aldermanic) city; the increase in the number of the governing body from three (mayor and two commissioners) to six (mayor and five councilmembers); the adoption of numbered positions and staggered terms; and the implementation schedule therefor, for the City of Ganado in Jackson County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your response to our April 27, 1992, request for additional information on June 18, 1992.

With respect to the procedures for conducting the January 18, 1992, special election, the change in form of government from a Type C (commission) to Type A (aldermanic) city, and the increase in the number of officials from three (mayor and two commissioners) to six (mayor and five councilmembers), with election at large, the Attorney General does not interpose any objection. However, we note that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the changes. 28 C.F.R. 51.41.

We cannot reach the same conclusion concerning the change to staggered terms and numbered posts, however. We have carefully considered the information you have provided, as well as information provided by other interested persons. The use of staggered terms and numbered posts in at-large elections limits minority electoral opportunity by foreclosing the use of single-shot voting. In light of the racially polarized voting that usually occurs in city elections, the proposed changes unnecessarily minimize the opportunity of minorities to elect candidates of their choice to office. (See City of Rome v. United States, 446 U.S. 156,

183-185 (1980).) The city has not adequately explained why other alternative election systems, such as five seats elected concurrently, could not be adopted by the city of Ganado. Finally, it appears that the minority community was not offered an opportunity to participate in the process of adopting these changes.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. See Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.52).

In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that the city's burden has been sustained in this instance with respect to the use of numbered posts, staggered terms, and the implementation schedule therefor. Therefore, on behalf of the Attorney General, I must object to these changes.

We note that under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the objected-to changes have neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. In addition, you may request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the proposed use of numbered posts, staggered terms and the implementation schedule therefor, continue to be legally unenforceable. Clark v. Roemer, 111 S.Ct. 2096 (1991); 28 C.F.R. 51.10 and 51.45.

To enable us to meet our responsibility to enforce the Act, please inform us of the action the City of Ganado plans to take concerning this matter. If you have any questions, you should call Richard B. Jerome, an attorney in the Voting Section, at (202) 514-8696.

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

cc: Gary Olson, Esq.
City Attorney

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

OCT 6 1992

Robert Bass, Esq.
The Wahrenberger House
208 West 14th Street
Austin, Texas 78701

Dear Mr. Bass:

This refers to the 1992 redistricting plan for the commissioners court of Castro County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your submission on September 4, 1992; supplemental information was received on September 28 and 30, and October 1, 1992.

We have carefully considered the information you have provided, as well as information provided by other interested persons. According to the 1990 Census, Hispanics constitute 46 percent of the population, 39 percent of the voting age population, and 34 percent of the citizen voting age population. No Hispanic person has been elected to the commissioners court. As you are aware, on March 30, 1992, the Attorney General interposed an objection under Section 5 to the initial redistricting plan adopted by the commissioners court following the 1990 Census. In the objection letter, we concluded that the county had not "provided any nonracial explanation for its failure to adopt a plan which includes at least one viable Hispanic majority district." We noted in that regard that county elections appear to be characterized by a pattern of polarized voting, and that while two districts in the 1991 plan were majority Hispanic in population and voting age population (Districts 1 and 3), it appeared that Hispanics did not constitute a majority of the eligible voting age population in either district because of the presence of a noncitizen Hispanic population in the county. We also noted our understanding that noncitizens are particularly concentrated in two areas of migrant farmworker housing, Azteca apartments and Coronado Acres.

Despite the absence of Section 5 preclearance, the county used the 1991 plan for the March 10, 1992 primary for commissioner Districts 1 and 3. We understand that it is preparing to hold the November general election pursuant to this plan as well. Section 5 expressly provides that covered jurisdictions, such as Castro County, Texas, may not implement

any change in a voting practice or procedure until preclearance is obtained, either from the Attorney General or the United States District Court for the District of Columbia. The Supreme Court has repeatedly held that Section 5 means what it says. E.g., Clark v. Roemer, 111 S.Ct. 2096 (1991); Hathorn v. Lovorn, 457 U.S. 255 (1982); United States v. Board of Supervisors of Warren County, 429 U.S. 642 (1977)(per curiam); Allen v. State Board of Elections, 393 U.S. 544 (1969). See also Procedures for the Administration of Section 5 (28 C.F.R. 51.10). "A voting change in a covered jurisdiction 'will not be effective as la[w] until and unless cleared' pursuant to one of these two methods." Clark v. Roemer, supra, 111 S.Ct. at 2101, quoting Conner v. Waller, 421 U.S. 656 (1975)(per curiam). Although as of the March 10, 1992 primary date, the Attorney General had not yet ruled on the county's preclearance request, preclearance -- and not the absence of a Section 5 determination -- is the necessary prerequisite for the implementation of a covered voting change, and in our December 6, 1991 request for additional information we specifically advised the county that the plan was unenforceable until preclearance was received. Furthermore, the illegal implementation of the redistricting plan in the primary election does not validate continued implementation in the general election. Clark v. Roemer, supra, and 111 S.Ct. 399 (1990).

Against this backdrop, the county adopted and now seeks Section 5 preclearance for a revised redistricting plan. The proposed plan, like its predecessor, includes two districts with Hispanic population majorities. Both include a district that is 65 percent Hispanic in population (District 2 in the 1992 plan; District 3 in the objected-to plan) and a district (District 1 in both plans) that is between 55 and 60 percent Hispanic (the new plan drops the Hispanic population percentage in this district by two percentage points from the objected-to plan).

The county's decision to shift the location of the district with the highest Hispanic population percentage from District 3 in the objected-to plan to District 2 was not required in order to remedy the concerns that led us to interpose an objection to the 1991 plan. This shift is significant since, pursuant to the county's system of staggered terms, District 3 is to elect its commissioner this year while the District 2 position will not be up for election until 1994. Our review indicates that the county specifically adopted this change in an attempt to validate the implementation of the unprecleared plan in this year's elections. The shift would have the necessary effect of delaying for two years the opportunity afforded Hispanics to elect a candidate of their choice while enabling the county to argue that no real harm would flow from the continued implementation of the objected-to plan in this year's elections since no election would be scheduled in the district with the highest Hispanic population

percentage. In this regard, our analysis indicates that reasonable redistricting alternatives are available in which District 3 would offer Hispanic voters a realistic electoral opportunity. Furthermore, there is no claim that the proposed delay is being undertaken to benefit the Hispanic community (e.g., to permit Hispanics to conduct additional voter registration drives).

In adopting Section 5 of the Voting Rights Act of 1965, Congress took the extraordinary step of reversing the usual presumption that laws validly adopted by state and local governments are effective unless judicially enjoined so as to "shift the advantage of time and inertia from the perpetrators of the evil [of discrimination] to its victims." South Carolina v. Katzenbach, 383 U.S. 301, 328 (1966). Castro County's attempt to validate its illegal implementation of the 1991 plan and delay the provision of an electoral opportunity to its Hispanic residents does not comport with this central Section 5 principle.

Under Section 5, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. See Georgia v. United States, 411 U.S. 526 (1973); see also 28 C.F.R. 51.52. In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that the county's burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the 1992 redistricting plan for the commissioners court.

We note that under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the redistricting plan has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. In addition, you may request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the 1992 redistricting plan for the commissioners court continues to be legally unenforceable. Clark v. Roemer, supra; 28 C.F.R. 51.10 and 51.45.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action Castro County plans to take concerning this matter. If you have any questions, you should call Mark A. Posner (202-307-1388), Special Section 5 Counsel in the Voting Section. Because the implementation of the objected-to plan is being addressed in the consolidated cases of Valdez v. Castro County, Texas, C.A. No. 2-92-CV-168

(N.D. Tex.), and Crespin v. Castro County, Texas, C.A. No. 2-92-CV-202 (N.D. Tex.), we are providing a copy of this letter by telefaxsimile transmission to the members of the three-judge court and plaintiffs' counsel in these cases.

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division

cc: Honorable William L. Garwood
Honorable Mary Lou Robinson
Honorable Eldon B. Mahon

Rolando Rios, Esq.
William L. Garrett, Esq.
Judith Sanders-Castro, Esq.
Jose Garza, Esq.

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

December 14, 1992

Gary W. Smith, Esq.
City Attorney
P. O. Box 779
Galveston, Texas 77553-0779

Dear Mr. Smith:

This refers to the change in the method of electing the city council from at large to four from single-member districts and two at large by numbered posts for concurrent terms; the districting plan; the elimination of the majority vote requirement for city council and mayoral elections; the shortening of mayoral and council terms from three years to two years; the change in maximum number of consecutive terms from two to three; and the implementation schedule for the City of Galveston in Galveston County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your further responses to our request for additional information on October 15 and November 10, 12 and 23, 1992; supplemental information was received on November 24, 1992.

With regard to the change to concurrent, two-year terms, the change in the limit on consecutive terms, and the elimination of the majority vote requirement, the Attorney General does not interpose any objection. However, we note that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the changes. In addition, as authorized by Section 5, we reserve the right to reexamine this submission if additional information that would otherwise require an objection to these changes comes to our attention during the remainder of the sixty-day review period. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41 and 51.43).

We cannot reach the same conclusion, however, concerning the change in method of election and the adoption of numbered posts for at-large positions. We have carefully considered the information you provided as well as information from other

interested parties and Census data. According to the 1990 Census, blacks constitute 28 percent and Hispanics constitute 21 percent of the total population of the City of Galveston. Under the existing at-large system, over the last twelve years, there have been a number of black or Hispanic candidates in city council and mayoral contests. Although many of these candidates were supported by their respective minority group, almost all were unsuccessful. This appears to have been the result of their failure, in general, to receive support outside their racial or ethnic group.

The city began the process that led to the proposed method of election after black plaintiffs filed suit to challenge the existing system under Section 2 of the Voting Rights Act. Arceneaux v. City of Galveston, No. G-90-221 (S.D. Tex.). The city's proposed system would have four council members elected from single-member districts, with two council members and the mayor elected at large. In choosing this system, the city rejected arguments in favor of a system preferred by the Arceneaux plaintiffs and others in the black and Hispanic communities that would have six single-member districts and a mayor elected at large.

The city has argued for preclearance of its proposed system on the ground that black voters and Hispanic voters are politically cohesive with each other and that as a result its system and the subsequently adopted districting plan would provide two districts in which minority voters would be able to elect candidates of their choice. The information provided by the city, however, does not support the claim that such political cohesion between black and Hispanic voters occurs in city elections. Under these circumstances, the city has not established that the proposed changes likely would produce the results it claims. Moreover, the city has not provided legitimate reasons for maintaining two at-large council positions (in addition to the mayor) in the face of the prevailing patterns of polarized voting.

Those same voting patterns also would appear to make it more difficult for minority voters to elect representatives of their choice to at-large council positions with the proposed adoption of numbered posts. As the city's charter review committee, itself, recognized when it considered this matter, the use of numbered posts would rule out the possibility of single-shot voting, a technique which often may be beneficial to minority voters to overcome the effects of racial bloc voting.

Under Section 5, the City of Galveston has the burden of showing that the proposed changes do not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or membership in a language minority

group. See Georgia v. United States, 411 U.S. 526 (1973); see also 28 C.F.R. 51.52. Accordingly, on behalf of the Attorney General, I must object to the proposed method of election with four single-member districts, two at-large seats and a mayor elected at large, as well as the adoption of numbered posts.

The Attorney General will make no determination regarding the districting plan because it is dependent upon the objected-to change to the 4-2-1 method of election. See 28 C.F.R. 51.22(b) and 51.35.

Effectuation of the proposed implementation schedule, which was to begin in May 1992, is no longer possible. Accordingly, the Attorney General will make no determination as to that schedule.

We note that under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed changes have neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. In addition, you may request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the proposed 4-2-1 system and the use of numbered posts continue to be legally unenforceable. Clark v. Roemer, 111 S. Ct. 2096 (1991); 28 C.F.R. 51.10 and 51.45.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the City of Galveston plans to take concerning these matters. If you have any questions, you should call George Schneider (202-307-3153), an attorney in the Voting Section.

Because the current method of electing the city council is at issue in the Arceneaux litigation, we are providing a copy of this letter to the court in that case.

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division

cc: Honorable Hugh Gibson
United States District Judge

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

February 19, 1993

Dr. Ronald G. Claunch
Dr. Leon C. Hallman
Box 13045 SFA Station
Stephen F. Austin State University
Nacogdoches, Texas 75962

Dear Drs. Claunch and Hallman:

This refers to the change in the method of electing trustees from seven at large to five single-member districts and two elected at large; the districting plan; the provision that the two at-large seats will be elected on a staggered basis; the implementation schedule; the realignment, renumbering, and elimination of voting precincts; the designation of three new polling places and two polling place changes; and the new location for absentee voting for the Atlanta Independent School District in Cass County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your responses to our request for additional information on November 12 and December 21, 1992; supplemental information was received on December 9 and 14, 1992.

We have carefully considered the information you have provided, as well as information provided by other interested persons. According to 1990 Census data, the Atlanta Independent School District has a total population of 10,651 of whom 23.3 percent are black. The school board is comprised of seven members elected at large by plurality vote to three-year, staggered terms.

The school board began its consideration of changing its at-large system after concerns were raised by the black community that at-large elections unfairly limited opportunities for black voters to elect candidates of choice to the school board. From the outset of the process, the board only considered alternative election plans that retained the at-large seats, despite the fact that black candidates had been unable in the past to gain

election to the board under the at-large system and the representations of minorities that this pattern of electoral results would likely continue in the future. Ultimately, black voters filed a lawsuit under Section 2 of the Voting Rights Act challenging the at-large method of election.

We have reviewed the school board's contention that black voters will be able to elect candidates of their choice to the at-large seats in light of the history of racial discrimination in the county, disparities that exist in the socio-economic conditions of black and white citizens, and election results over the past decade. Our analysis of election contests involving voters within the school district suggests the existence of a pattern of racially polarized voting within the school district, with black-sponsored candidates facing consistent defeat other than in election districts with substantial black majorities. Indeed, despite the apparent support of black voters, no black candidate has ever been elected to the school board under the at-large election system. There is little reason to believe that black voters will have any greater opportunity to elect their candidates of choice to the at-large seats under the proposed plan than is available to them under the present plan.

The board also contends that it did not consider other electoral schemes that contain fewer at-large seats because the demographers retained by the board believed that it was not possible to draw more than one majority black district under any such options available, i.e., under a 5-2, 6-1 or a 7-0 election scheme. But the information provided to us indicates that the board favored retaining two at-large seats prior to the time that the demographers were actually retained. The board never appears to have deviated from its preference for the two at-large seats, except when it voted in December 1991 in favor of retaining the at-large election scheme for all seven trustee seats. Prior to the adoption of the instant plan in May 1992, the board did not request and the demographers did not devise a districting plan for more than five single-member districts. Our analysis of the demographics of the school district, and the data you provided for Census blocks split by school district boundaries, suggests that the feasibility of drawing two majority black single-member districts under a 7-0 plan was readily discernible.

Finally, it appears that the protection of the interests of incumbents played a significant role in the school district's decision. Our review of the information you provided suggests

that at-large seats were retained and their election schedule staggered in order to permit incumbents to run for re-election without requiring that they compete against one another. While we recognize that the desire to protect incumbents may not in and of itself be an inappropriate consideration, it may not be accomplished at the expense of minority voting potential. See Garza v. Los Angeles County, 918 F.2d 763, 771 (9th Cir. 1990), cert. denied, 111 S.Ct. 681 (1991); Ketchum v. Byrne, 740 F.2d 1398, 1408-09 (7th Cir. 1984), cert. denied, 471 U.S. 1135 (1985). Where, as here, the protection afforded incumbents appears to have been provided at the expense of black voters, the school board bears a heavy burden of demonstrating that its choices are not tainted, at least in part, by an invidious racial purpose.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. See Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.52). In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that your burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the proposed change in the method of election for the school district.

We note that under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed changes have neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. In addition, you may request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the county council and school board redistricting plan continues to be legally unenforceable. Clark v. Roemer, 111 S.Ct. 2096 (1991); 28 C.F.R. 51.10 and 51.45.

With respect to the remaining changes, we understand that those changes are dependent on the method of election change. In view of the objection interposed herein to the change in method of election, the Attorney General will make no determination with regard to those matters. See 28 C.F.R. 51.22(b).

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the Atlanta Independent School District plans to take concerning this matter. If you have any questions, you should call Ms. Zita Johnson-Betts (202-514-8690), an attorney in the Voting Section.

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

MAR 22 1993

Mr. Mac Wheat
Superintendent
Carthage Independent School District
#1 Bulldog Drive
Carthage, Texas 75633

Dear Mr. Wheat:

This refers to the change in method of election from seven members elected at large by numbered places and majority vote to five members elected from single-member districts and two at-large seats by numbered places with a majority vote requirement, the districting plan, the implementation schedule, and the establishment of a new polling place for the Carthage Independent School District in Panola County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received supplemental information necessary to review these matters on January 21 and March 16, 1993.

The Attorney General does not interpose any objection to the submitted establishment of a new polling place. However, we note that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of this change. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41).

With respect to the other submitted changes, however, we cannot reach a similar conclusion. We have carefully considered the information you have provided, as well as 1990 Census data and information and comments from other interested parties. According to the 1990 Census, black residents constitute 18.9 percent of the school district's total population and 17.7 percent of its voting age population. Information available to us indicates an apparent pattern of racially polarized voting among the school district's voters and that under the existing at-large system, black voters have been unable to elect candidates of their choice to the school board.

In 1989, the school board established a biracial study committee to consider alternative methods of election. Among the plans considered were plans with seven single-member districts (7-0 plan), six single-member districts and one at-large seat (6-1 plan) and five single-member districts and two at-large seats (5-2 plan). While all of the black members of the committee preferred a seven single-member district plan, all of the white members preferred a 5-2 plan. The committee reached unanimity on a compromise by agreeing to recommend a 5-2 plan, provided that there be a plurality vote requirement for the at-large seats. The committee's work was completed in 1992 when a districting plan was developed and its final recommendation was sent to the school board.

While the school board decided to accept the study committee's recommendation to change to a 5-2 plan, as well as to adopt the proposed districting plan, the board rejected the plurality vote recommendation and decided to impose a majority vote requirement instead. The board made this latter decision apparently without seeking to obtain input from the minority community. Moreover, the timing of the decision raises concerns, as it came just four months after a recent contest for school board trustees in which a black candidate received a 40-percent plurality of the votes cast in the primary election, but was defeated in the runoff election by a white candidate.

The school board now contends, apparently based upon information it first received months after the decision was made, that state law may proscribe the use of a plurality vote requirement for some trustee positions and a majority vote requirement for others. Of course, such post hoc information could not have formed the basis of the board's decision. In addition, the state law on this point is not clear and we have been directed to no definitive interpretation on this issue. Moreover, the board has not suggested that state law prevented it from choosing to have all seats in the new election system subject to a plurality vote requirement.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. See Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.52). In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that the school district's burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the submitted change in method of election.

We note that under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed changes have neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. In addition, you may request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the change in method of election continues to be legally unenforceable. Clark v. Roemer, 111 S. Ct. 2096 (1991); 28 C.F.R. 51.10 and 51.45.

Because the submitted districting plan and implementation schedule are dependent upon the method of election change to which an objection is being interposed, the Attorney General is unable to make a final determination with respect to those changes at this time. 28 C.F.R. 51.22(b).

To enable us to meet our responsibility to enforce both Section 2 and Section 5 of the Voting Rights Act, please inform us of the action the Carthage Independent School District plans to take concerning this matter. If you have any questions or want to discuss this matter, please call Donna M. Murphy (202-514-6153), an attorney in the Voting Section.

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

MAR 22 1993

Mr. Earl Scarborough
Business Manager
Corsicana Independent School District
601 North 13th Street
Corsicana, Texas 75110

Dear Mr. Scarborough:

This refers to the change from a plurality to a majority vote requirement for election to the board of trustees for the Corsicana Independent School District in Navarro County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received responses to our request for additional information on December 2, 1992, January 22, 1993, and March 3, 1993.

We have carefully considered the information you have provided, as well as Census data and information and comments from other interested parties. According to 1980 Census data, blacks comprised 22.5 percent and Hispanics comprised 4.5 percent of the school district's population. While 1990 Census data have not been provided for the school district as a whole, the 1990 data for the City of Corsicana, which contains almost all of the school district's population, reflect an increase in the minority population percentages since 1980.

Prior to 1978, the school district's seven-member board of trustees was elected at large with a plurality vote requirement. As you are aware, on April 28, 1978, we interposed a Section 5 objection to the school district's proposal to add majority vote and numbered place requirements to its at-large system. We noted in our objection letter that the proposed changes might "have the effect of diluting black voting strength in elections for school trustees." Shortly thereafter, the school district repealed the resolution that provided for a majority vote requirement and obtained Section 5 preclearance for the imposition of numbered places. Thus, the change to a majority vote requirement now before us would impose the same electoral system,

at-large elections with numbered place and majority vote requirements, to which we had objected in 1978.

Our analysis of elections involving voters within the school district suggests that they remain characterized by racially polarized voting patterns. We are aware, however, that since 1978, only black candidates have run for Place 3, and that the school board has been comprised of six white members and one black member. But it appears that under the current system minority voters have not had a realistic opportunity to elect candidates of choice to the school board other than from Place 3, and that as a result minority candidates may have been discouraged from running for the board other than from Place 3.

In this context, the imposition of a majority vote requirement may further limit the opportunity of minority voters to elect candidates of their choice by increasing the probability of "head-to-head" contests between minority and white candidates. See, e.g., Rogers v. Lodge, 458 U.S. 613, 627 (1992); City of Port Arthur v. United States, 459 U.S. 156 (1982). Under these circumstances, we cannot say that the school district has demonstrated that the adoption of a majority vote requirement will not "lead to a retrogression in the position of . . . minorities with respect to their effective exercise of the electoral franchise." Beer v. United States, 425 U.S. 130, 141 (1976).

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. See Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.52). In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that the school district's burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the use of a majority vote requirement for election of school board trustees.

We note that under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the use of a majority vote requirement in elections for school board trustees has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color or membership in a language minority group. In addition, you may request that the Attorney General reconsider the objection. However, until the

objection is withdrawn or a judgment from the District of Columbia Court is obtained, use of a majority vote requirement in elections for school board trustees continues to be legally unenforceable. Clark v. Roemer, 111 S. Ct. 2096 (1991); 28 C.F.R. 51.10 and 51.45.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the Corsicana Independent School District plans to take concerning this matter. If you have any questions, you should call Ms. Zita Johnson-Betts (202-514-8690), an attorney in the Voting Section.

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General *Washington, D.C. 20035*

APR 6 1993

Ms. Rose Kendrick
City Secretary
128 North Dallas Avenue
Wilmer, Texas 75172

Dear Ms. Kendrick:

This refers to your request that the Attorney General reconsider the July 20, 1992, objection under Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c, to the adoption of numbered positions for the election of councilmembers in the City of Wilmer, Dallas County, Texas. We received your request on February 12, 1993.

We have considered carefully the information you have provided. We note, however, that it does not contain any factual information that addresses or rebuts the conclusions we previously reached regarding the pattern of racially polarized voting in city elections and the potential adverse effect of this pattern on the opportunity for minority voters to elect their candidates of choice to the city council. Rather, you suggest that we are merely erroneous in our conclusions, without providing any supporting documentation or any information demonstrating that there has been "a substantial change in operative fact or relevant law." See the Procedures for the Administration of Section 5 (28 C.F.R. 51.46).

In your letter, you indicate that numbered positions may serve as the functional equivalent of single-member districts or at least permit a cohesive minority group to nominate a candidate from its area. As we previously explained, however, it is well recognized that the addition of numbered positions to an at-large election system with a majority vote requirement may further limit the opportunity of minority citizens to elect candidates of their choice to office. See, e.g., City of Rome v. United

States, 446 U.S. 156, 183-185 (1980). Numbered positions do not serve as the functional equivalent of single-member election districts. Rather, the use of numbered positions serves to generate head-to-head election contests and to preclude minority voters from utilizing the election device of single-shot voting.

You have not provided any basis for us to alter our view that the use of numbered positions will make it less likely that minority voters will be able to elect candidates of their choice to the city council. Under these circumstances, we still are unable to say that the city has met its burden of demonstrating that the use of numbered positions will not "lead to a retrogression in the position of . . . minorities with respect to their effective exercise of the electoral franchise." Beer v. United States, 425 U.S. 130, 141 (1976).

In light of the considerations discussed above, I remain unable to conclude that the City of Wilmer has carried its burden of showing that the submitted change has neither a discriminatory purpose nor a discriminatory effect. See Georgia v. United States, 411 U.S. 526 (1973); 28 C.F.R. 51.52. Therefore, on behalf of the Attorney General, I must decline to withdraw the objection to the use of numbered positions for city council elections.

As we previously advised, you may seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed change has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. We remind you that until such a judgment is rendered by that court, the objection by the Attorney General remains in effect and the proposed change continues to be legally unenforceable. See Clark v. Roemer, 111 S. Ct. 2096 (1991); 28 C.F.R. 51.10, 51.11, and 51.48(c) and (d).

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the City of Wilmer plans to take concerning this matter. If you have any questions, you should call Lora L. Tredway (202-307-2290), an attorney in the Voting Section.

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

April 26, 1993

Mr. Robert Gorsline
City Secretary
310 South Main
Lamesa, Texas 79331

Dear Mr. Gorsline:

This refers to the change from a plurality to a majority vote requirement for the election of the mayor for the City of Lamesa in Dawson County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received responses to our April 27, 1992, request for additional information on February 23, and April 7 and 9, 1993.

We have carefully considered the information you have provided, as well as Census data and information and comments from other interested parties. According to the 1990 Census, Hispanics comprise 46 percent of the city's total population and 39 percent of its voting age population. Review of Census data reveals that these figures represent an increase of six percentage points in the Hispanic proportion of the city's total population since 1980.

Prior to 1992, the mayor of Lamesa was selected from among the city's seven elected councilmembers, three of whom were elected from single-member districts by majority vote, and four of whom were elected at large by plurality vote. Under this method of selection, no Hispanic was ever appointed mayor. On April 27, 1992, the Attorney General precleared a change to six councilmembers elected from single-member districts and the mayor elected at large. We did not preclear the city's proposed majority vote requirement for the election of the mayor because the information sent was insufficient to enable us to determine that the change satisfied the requirements of Section 5. As a result, we requested additional information about the majority vote requirement for mayoral elections.

After reviewing the city's response to that request and other information available to us, we see an apparent pattern of racially polarized voting in city elections that has hampered the ability of Hispanic voters to elect candidates of their choice to at-large positions on the city council. In this context, the imposition of a majority vote requirement may further limit the opportunity of Hispanic voters to elect candidates of their choice by increasing the probability of "head-to-head" contests between minority and white candidates. See, e.g., Rogers v. Lodge, 458 U.S. 613, 627 (1982); City of Port Arthur v. United States, 459 U.S. 156 (1982).

We have considered the city's explanation that the use of a majority vote requirement for election of the mayor does not represent a change in the city's past electoral procedures because the mayor was previously selected by a majority of city councilmembers. In addition, the city suggests that it has used a majority vote requirement in its single-member districts since 1984 and that these elections are similar procedurally to the election of a single council position, such as mayor.

We do not find either of these arguments persuasive. Until 1992, all of the city's at-large councilmanic positions were elected by a plurality vote requirement. The city now proposes to elect the remaining at-large position on the council by a majority vote requirement, a change from the manner in which at-large seats on the council have previously been elected. Nor is the selection of a mayor, by a majority of the votes cast by councilmembers, equivalent to the direct election of a mayor by a majority of the votes cast. While a multiplicity of candidates and a plurality vote winner are possible in a direct election, that scenario is unlikely in the appointment system. Under these circumstances, we cannot conclude that the city has demonstrated that the adoption of a majority vote requirement for mayoral elections will not "lead to a retrogression in the position of . . . minorities with respect to their effective exercise of the electoral franchise." Beer v. United States, 425 U.S. 130, 141 (1976).

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. See Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.52). In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that the city's burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the use of a majority vote requirement for election of mayor.

We note that under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the use of a majority vote requirement in elections for mayor has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color or membership in a language minority group. In addition, you may request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, use of a majority vote requirement in elections for mayor continues to be legally unenforceable. Clark v. Roemer, 111 S. Ct. 2096 (1991); 28 C.F.R. 51.10 and 51.45.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the City of Lamesa plans to take concerning this matter. If you have any questions, you should call Ms. Zita Johnson-Betts (202-514-8690), an attorney in the Voting Section.

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

May 4, 1993

Robert T. Bass, Esq.
Allison and Associates
Wahrenberger House
208 West 14th Street
Austin, Texas 78701

Dear Mr. Bass:

This refers to the procedures for conducting the January 5, 1993, special local option election in Bailey County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your initial submission on March 5, 1993; supplemental information was received on March 15, 1993.

We have carefully considered the information you have provided as well as information contained in previous Section 5 submissions concerning Bailey County's justice of the peace districts. As you are aware, on April 6, 1992, the Attorney General interposed an objection to the county's submission of a 1991 redistricting plan to be used to elect members of the commissioners court, as well as justices of the peace and constables. On two occasions, July 6 and September 28, 1992, the Attorney General denied requests of the county to withdraw the objection.

We understand that under state law, special local option elections like the one under review may be held upon the petition of county residents either county-wide, within the boundaries of an incorporated city or town, or within the boundaries of a "justice precinct," i.e., an election district for justice of the peace. According to information provided in your submission, county officials permitted local residents to circulate their petitions within the boundaries of Justice Precinct No. 4 as drawn in the 1991 redistricting plan to which the Attorney General had interposed an objection.

Subsequently, the county confirmed that the number of signatures obtained were sufficient to trigger an election in this district, and the county held this election on January 5, 1993, using the objected-to district boundaries. Changes in procedure which affect voting are unenforceable without Section 5 preclearance. Clark v. Roemer, 111 S. Ct. 2996 (1991); Procedures for the Administration of Section 5 (28 C.F.R. 51.10). We note that the county's use of unprecleared district boundaries for Justice Precinct No. 4 occurred well after Bailey County received notice of our initial objection to those boundary lines and the subsequent maintaining of that objection on two separate occasions.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. See Georgia v. United States, 411 U.S. 526 (1973); see also 28 C.F.R. 51.52. In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that your burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the procedures for conducting the January 5, 1993, special local option election.

We note that under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed change has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. See 28 C.F.R. 51.44. In addition, you may request that the Attorney General reconsider the objection. See 28 C.F.R. 51.45. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the special election procedures continue to be legally unenforceable.

If you have any questions regarding this matter, you should call George Schneider (202-307-3153), an attorney in the Voting Section.

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

May 10, 1993

Virginia Daugherty, Esq.
Daugherty & Associates
P.O. Box 15507
Amarillo, Texas 79105

Dear Ms. Daugherty:

This refers to the 1993 redistricting plan for commissioner court districts, the renumbering of voting precincts, realignment of voting precincts, the creation of a voting precinct and the polling place therefor, and a polling place change for Castro County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your submission on March 9, 1993; additional information was received on April 27 and 28, and May 3, 1993.

We have considered carefully the information provided in this submission and in the county's submissions of its 1991 and 1992 redistricting plans, as well as Census data and information and comments received from other interested persons. As you know, we interposed Section 5 objections to both the 1991 and 1992 redistricting plans.

When we objected to the 1991 redistricting plan, we explained that the county had not demonstrated any nonracial explanation for its failure to provide for even one Hispanic district in which Hispanic voters would have a realistic opportunity to elect candidates of their choice. We noted that under the 1991 plan two districts (Districts 1 and 3) were majority Hispanic in total population and voting age population but that our analysis indicated that Hispanics did not constitute a majority of the eligible voting age population in either district because of the presence of a noncitizen Hispanic population in the county. We further noted that this noncitizen population is particularly concentrated in two areas of migrant farmworker housing, Azteca apartments and Coronado Acres. Despite the lack of Section 5 preclearance, the county implemented the 1991 redistricting plan in the 1992 primary elections for commissioners court.

In 1992, following our objection, the county adopted a redistricting plan that shifted the district with the highest Hispanic population percentage from District 3 in the objected-to plan to District 2 in the proposed plan in an attempt to validate its implementation of the unprecleared plan in the county's 1992 primary elections. We noted that the effect of this shift, because of the county's system of staggering terms, was unnecessarily to delay for two years the opportunity afforded Hispanic voters to elect their candidates of choice. Accordingly, the Attorney General interposed an objection to the county's 1992 plan.

The 1993 redistricting plan now under review has two districts (Districts 1 and 3) with Hispanic total population percentages of 62.9 and 69.6 percent, respectively. District 1 includes the town of Hart, the southeast quadrant of the county and southern portions of the town of Dimmitt. District 3 extends through the northwest quadrant of the county and includes the Coronado Acres development and part of the town of Dimmitt. A third district which is 29 percent Hispanic in total population, District 4, cuts through a majority-Hispanic community in the southern half of the City of Dimmitt, thereby fragmenting this Hispanic population among Districts 1, 3 and 4.

Our analysis of voter registration and voter turnout estimates indicates that this fragmentation in south Dimmitt would unnecessarily limit the ability of Hispanic voters to elect their candidates of choice in proposed District 3. The turnout data you have supplied indicates a significant disparity between the rates of Hispanic and non-Hispanic turnout in the county, as a whole as well as in the precincts that comprise most of proposed District 3. Thus, the fragmentation of the Hispanic population concentration in South Dimmitt between three of the proposed districts is significant in light of the turnout disparities.

We have considered and found unpersuasive the county's contention that this fragmentation of the Hispanic population concentration in south Dimmitt is unavoidable. We note that the county considered and rejected at least one redistricting alternative that would have gone far toward remedying that fragmentation by unifying most of the Hispanic core population in Dimmitt into District 3 while at the same time resulting in a 73 percent Hispanic share of total population in that district. Other alternative approaches would appear to have been readily discernible, as well. While the county is not required by Section 5 to adopt any particular redistricting plan, it is not free to adopt plans that unnecessarily dilute minority voting strength.

In addition, it appears that the county's redistricting decisions have been made to foster the interests of incumbents on the commissioners court. We recognize that the protection of incumbents may not in and of itself be an inappropriate consideration, but it may not be accomplished at the expense of minority voting potential. See Garza v. County of Los Angeles, 918 F.2d 763, 771 (9th Cir. 1990), cert. denied, 111 S. Ct. 681 (1991).

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. See Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.52). In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that your burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the 1993 redistricting plan for the commissioners court.

We note that under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed change has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. In addition, you may request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the 1993 redistricting plan for the commissioners court continues to be legally unenforceable. Clark v. Roemer, 111 S. Ct. 2096 (1991); 28 C.F.R. 51.10 and 51.45.

Because the voting precinct and polling place changes are dependent upon the objected-to redistricting, the Attorney General will make no determination with regard to them. See 28 C.F.R. 51.22.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action Castro County plans to take concerning this matter. If you have any questions, you should call Robert Kengle (202-514-6196), an attorney in the Voting Section.

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

June 4, 1993

Virginia Daugherty, Esq.
Daugherty and Associates
P. O. Box 15507
Amarillo, Texas 79105

Dear Ms. Daugherty:

This refers to the 1991 redistricting plan for the county commission, the additional polling place and the renumbering and realignment of voting precincts for McCulloch County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your response to our March 12, 1993, request for additional information on April 5, 1993.

We have considered carefully the information you have provided as well as comments from other interested parties. The Hispanic share of the county's total population increased from 19.1 percent in 1980 to 26.4 percent in 1990; approximately 80 percent of the county's Hispanic population resides in the City of Brady. The commissioners court consists of four members elected from single-member districts and one member elected at large. The existing redistricting plan, which has been in use since 1968, divides the City of Brady and the Hispanic population in the city among the districts such that Hispanics comprise no more than 41 percent of the total population and 36 percent of the voting age population in any district, according to the 1990 Census.

Despite the significant increase in the percentage of Hispanic residents in the county since 1980 and despite the concentration of Hispanic residents in the City of Brady, the proposed plan maintains the division of Brady among the four districts, effectively dispersing most of the county's Hispanic residents among the districts. The result is that Hispanic residents comprise 42 percent of the total population and 36 percent of the voting age population in the most-heavily Hispanic district under the proposed plan.

The information available to us suggests that the commissioners court gave only perfunctory consideration to an alternative redistricting proposal that eliminated the fragmentation of the Hispanic community within Brady and provided for one district in which approximately 60 percent of the total population and 54 percent of the voting age population was Hispanic. While the county is not required by Section 5 to adopt any particular plan, it is not free to adopt a plan that perpetuates the unnecessary fragmentation of Hispanic population concentrations. In the context of an apparent pattern of racially polarized voting that has defeated candidates preferred by Hispanic voters or discouraged such candidacies under the existing redistricting plan, it appears that the proposed plan will continue to deny Hispanic voters an opportunity to elect candidates of their choice to the commissioners court.

The explanations provided in your submission for the continued division of the Hispanic community in Brady appear largely to be post hoc justifications for maintaining the status quo and thereby protecting the interests of the incumbent commissioners. We recognize that the protection of incumbents may not in and of itself be an inappropriate consideration, but it may not be accomplished at the expense of minority voting potential. See Garza v. County of Los Angeles, 918 F.2d 763, 771 (9th Cir. 1990), cert. denied, 111 S. Ct. 681 (1991).

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. See Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.52). In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that your burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the 1991 commissioner court redistricting plan.

We note that under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed change has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. In addition, you may request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the 1991 redistricting plan continues to be legally unenforceable. Clark v. Roemer, 111 S. Ct. 2096 (1991); 28 C.F.R. 51.10 and 51.45.

With respect to the proposed additional polling place and renumbering and realignment of precincts, the Attorney General will make no determination at this time since these changes are directly related to the objected-to change. 28 C.F.R. 51.22.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action McCulloch County plans to take concerning this matter. If you have any questions, you should call Robert A. Kengle (202-514-6196), an attorney in the Voting Section.

Since the Section 5 status of the proposed redistricting plan has been placed at issue in Mireles v. McCulloch County, No. A-92 CA-577 SS (W.D. Tex.), we are providing a copy of this letter to the court and counsel of record in that case.

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

cc: Honorable Sam Sparks
United States District Judge

Counsel of Record

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

July 19, 1993

Robert T. Bass, Esq.
Allison & Associates
Wahrenberger House
208 West 14th Street
Austin, Texas 78701

Dear Mr. Bass:

This refers to the reduction in the number of justice of the peace and constable districts from four to one and the implementation schedule in Bailey County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your response to our March 16, 1993, request for additional information on May 19, 1993.

We have carefully considered the information that you have provided as well as 1990 Census data, comments from other interested persons and information contained in previous Section 5 submissions concerning Bailey County's justice of the peace and constable districts. According to the 1990 Census, Hispanic residents constitute 38.8 percent of the county's total population and 32.6 percent of the voting age population. Under the county's existing electoral system, there are four justice of the peace/constable districts, which coincide with the county's commissioner's court districts as they existed before we precleared the 1992 commissioner's court redistricting.

In 1992, we interposed a Section 5 objection to the county's 1991 redistricting plan, noting concerns about how District 4 was drawn in light of the apparent pattern of polarized voting in county elections and the recent, narrow defeat of a candidate preferred by Hispanic voters. The county subsequently revised its plan by increasing the Hispanic share of the population in District 4 to 70 percent (63 percent voting age population). We precleared the revised plan earlier this year.

Under the precleared plan, Hispanic voters would appear to have a good opportunity to elect their chosen candidates in District 4. But for the proposed reduction in the number of justices of the peace and constables, that opportunity would extend to the offices of justice of the peace and constable as there is no indication that the county would have departed from its historic pattern of matching its justice of the peace and constable districts with those used to elect county commissioners.

Concerns have been raised about the timing of the decision and the nature and extent of minority participation in the county's decision-making process that led to the proposed change. The decision to reduce the number of justices of the peace and constables followed our 1992 objection and came on the heels of a settlement in a lawsuit which produced a new commissioners court plan that enhances Hispanic voting potential.

In support of the proposed reduction the county notes that it has a long-standing practice of allowing the justice of the peace elected from District 1 to perform essentially all justice of the peace duties throughout the county. The county contends that the proposed reduction has been undertaken to consolidate justice of the peace and constable duties because the existing four positions are not necessary to fulfill the county's needs. While it may be true that having one justice of the peace instead of four might result in some economies, it is not clear how much money would be saved, since the projected cost savings, as we understand them, refer to potential costs if the existing system were successfully challenged in litigation. Nor did the county appear to consider the possibility of having two or three justices of the peace/constables instead of four as a means of saving costs while recognizing existing electoral opportunities for Hispanic voters. Under these circumstances, we cannot conclude that the county's proffered explanations for the proposed reduction have been justified.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. Georgia v. United States, 411 U.S. 526 (1973); Procedures for the Administration of Section 5 (28 C.F.R. 51.52). In light of the considérations discussed above, I cannot conclude, as I must under the Voting Rights Act, that your burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the submitted reduction in the number of justice of the peace and constable districts from four to one.

We note that under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed changes have neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. In addition, you may request that the Attorney General reconsider the objection. See 28 C.F.R. 51.11 and 51.45. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the proposed reduction in justice of the peace and constable districts continues to be legally unenforceable. Clark v. Roemer, 111 S. Ct. 2096 (1991); 28 C.F.R. 51.10 and 51.45.

Because the submitted implementation schedule is directly related to the objected-to change, no determination by the Attorney General regarding the schedule is appropriate at this time. 28 C.F.R. 51.22(b).

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action Bailey County plans to take concerning this matter. If you have any questions, you should call George Schneider (202-307-3153), an attorney in the Voting Section.

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General, Washington, D.C. 20035

AUG 30 1993

Irene E. Foxhall, Esq.
Mayor, Day, Caldwell & Keeton
700 Louisiana, Suite 1900
Houston, Texas 77002-2778

Dear Ms. Foxhall:

This refers to the 1992 redistricting plans for the commissioners court and justices of the peace/constables for Wharton County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your further response to our request for additional information on June 30, 1993; supplemental information was received on August 20, 1993.

We have carefully considered the information you have provided, data from the 1990 Census, and information from other interested persons. According to the 1990 Census, Hispanic and black residents constitute, respectively, 25.3 percent and 15.4 percent of the county's total population. The commissioners court consists of four members elected from single-member districts and the county judge, elected at large. We note that Wharton County currently uses the same districting plan to elect members of the commissioners court, justices of the peace and constables and that the proposed plan continues this practice. Apparently, no Hispanic or black person has been elected to county office in Wharton County in this century.

Our analysis of the county's demographic patterns shows that it is not possible to create a commissioners court district in which either Hispanic persons or black persons constitute a majority of the population. The information available to us suggests that the county's redistricting approach rested upon its assumption that Hispanic and black voters are not politically cohesive in Wharton County.

The absence of any voting precincts in Wharton County that have a Hispanic population majority precludes any definitive statistical assessment of Hispanic-black cohesion. However, anecdotal information that we obtained during our review supports

the conclusion that Hispanic and black voters are politically cohesive in Wharton County. The county has proffered no justification for its apparent failure to explore nonstatistical information relevant to the issue of minority cohesion.

Under the county's proposed plan, Hispanics and blacks combined would be a majority of the population in two districts, Districts 2 (centered around the City of Wharton) and 4 (centered around El Campo). However, in view of the apparent pattern of racially polarized voting in county elections and other factors, it would appear that neither of those districts will afford minority voters a real opportunity to elect candidates of their choice. One aspect of the proposed plan is the division of a predominantly minority area of the City of Wharton between Districts 2 and 4. We understand that, during the redistricting process, the plaintiffs in the pending one-person, one-vote lawsuit, Jackson v. Wharton County, No. H-92-2294 (S.D. Tex.), offered alternative plans that avoided such fragmentation, but that the county rejected those plans for a number of reasons, including their effect on commissioner services in rural areas. While the county is not required by Section 5 to adopt any particular plan, it is not free to adopt a plan that results in unnecessary fragmentation of minority population concentrations.

It appears that the Jackson plaintiffs made it clear from the start of the litigation that they were interested in reaching a compromise that included an increase in the minority percentage of District 2. The plaintiffs' view recognized that the black population of Wharton County, especially in the City of Wharton area, has a higher level of political participation than does the Hispanic population. On November 5, 1992, the plaintiffs' attorneys met with the county's attorneys and expert and made specific suggestions for modifying the county's proposed plan in order to increase the minority percentage in District 2. Although the plaintiff did not draw up plans embodying the suggestions made at the meeting, nothing prevented the county from pursuing the suggested alternatives. Our analysis reveals that there were easily discernible alternative districting options, consistent with the county's stated redistricting criteria, that would avoid the limiting of minority voting strength occasioned by the fragmentation evident in the proposed plan. The county has not provided a sufficient explanation for its failure to explore such alternatives.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.52). In light of the considerations discussed above, I cannot

conclude, as I must under the Voting Rights Act, that your burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the 1992 redistricting plans.

We note that under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed changes have neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. See 28 C.F.R. 51.44. In addition, you may request that the Attorney General reconsider the objection. See 28 C.F.R. 51.45. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the redistricting plans continue to be legally unenforceable. See Clark v. Roemer, 111 S. Ct. 2096 (1991); 28 C.F.R. 51.10.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action Wharton County plans to take concerning this matter. If you have any questions, you should call George Schneider (202-307-3153), an attorney in the Voting Section.

Because the Section 5 status of the proposed commissioners court plan is a matter before the court in Jackson v. Wharton County, we are providing a copy of this letter to the court and counsel of record in that case.

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

cc: Honorable Melinda Harmon
United States District Judge

Rex VanMiddlesworth, Esq.
Jose Garza, Esq.
Judith Sanders-Castro, Esq.

JPT:GS:DBM:lrj
DJ 166-012-3
92-5239

November 22, 1993

Irene E. Foxhall, Esq.
Mayor, Day, Caldwell & Keeton
700 Louisiana, Suite 1900
Houston, Texas 77002-2778

Dear Ms. Foxhall:

This refers to your request that the Attorney General reconsider the August 30, 1993, objection under Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c, to the 1992 redistricting plan for the commissioners court and justices of the peace/constables for Wharton County, Texas. We received your letter on September 23, 1993.

Your November 12, 1993, letter withdraws your request from Section 5 review. Accordingly, no determination by the Attorney General is required concerning this matter. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.25(a)). We will proceed with our review of your 1993 redistricting plan for the commissioners court and justices of the peace/constables, submitted under Section 5 on November 15, 1993 (File No. 93-4359).

Because the Section 5 status of the proposed commissioner districts is a matter before the court in Jackson v. Wharton County, No. H-92-2294 (S.D. Tex.), we are providing a copy of this letter to the court and counsel of record in that case.

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

By:

Steven H. Rosenbaum
Chief, Voting Section

cc: Honorable Melinda Harmon
United States District Judge

Rex VanMiddlesworth, Esq.
Jose Garza, Esq.
Judith A. Sanders-Castro, Esq.

cc: Public File

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

November 19, 1993

Honorable John Hannah, Jr.
Secretary of State of Texas
Elections Division
P. O. Box 12060
Austin, Texas 78711

Dear Mr. Secretary:

This refers to Chapter 626 (1993) which provides for the elected board of directors of the Edwards Underground Water District to be replaced by an appointed board of directors of the Edwards Aquifer Authority in the State of Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your responses to our request for additional information on September 20, November 12, and November 15, 1993.

We have carefully considered the information you have provided, as well as information and comments from other interested persons. The state has explained that Chapter 626 was adopted as its response to the violations of the Endangered Species Act, 16 U.S.C. 1536 and 1538, found by the federal court in Sierra Club v. Lujan, 91-CA-069, (W.D. Texas, order dated February 1, 1993). Our review of this legislation under Section 5, however, is limited solely to those aspects that relate to voting. Specifically, the proposed dissolution of the elected twelve-member board that manages a portion of the Edwards Aquifer and its replacement by an appointed board is a change affecting voting within the meaning of Section 5. Presley v. Etowah County Commission, 112 S.Ct. 820 (1992); Allen v. State Board of Elections, 393 U.S. 544 (1969); Procedures for the Administration of Section 5, 28 C.F.R. 51.13. Under Section 5, the Attorney General is required to determine whether the state has sustained its burden of showing that this change is free of the proscribed discriminatory purpose or effect. See, e.g., 28 C.F.R. 51.52(a), 51.55, 51.56. It is with these standards in mind that we have reviewed and analyzed the submitted voting change.

The Edwards Underground Water District includes Bexar, Comal and Hays Counties. According to the 1990 Census, it has a total population of 1,261,098 persons, of whom 48.7 percent are Hispanic. The Hispanic share of the voting age population of the water district is 44.5 percent. Almost 94 percent of the total population in the water district is located in Bexar County. The water district is governed by a twelve-member board of directors with six members elected from Bexar County (four from single-member districts and two at-large) and three members elected at large in Comal County and three members elected at large in Hays County. Two of the single-member districts in Bexar County have Hispanic majorities in voting age population.

The single-member district component of the system in Bexar County is a recent development, having been first implemented in 1989. It appears to have been adopted as a direct response to successful litigation under Section 2 of the Voting Rights Act, 42 U.S.C. 1973, relating to the use of a purely at-large system for the election of the San Antonio River Authority. Leal v. San Antonio River Authority, et al., C.A. No. SA85-CA2988 (1987). Prior to the use of single-member districts, no Hispanic person had ever served on the board of directors of the water district. As a result of the change to the existing method of election, Hispanic voters consistently have been able to elect representatives of their choice to the two single-member districts with Hispanic majorities. It remains the case, however, that Hispanic voters have been unable to elect representatives of their choice to any of the six seats outside of Bexar County. In this regard, we are aware that there is a pending federal court challenge to the existing water district election system on one-person, one-vote grounds under the Fourteenth Amendment and Hispanic vote dilution grounds under Section 2. Williams v. Edwards Underground Water District, C.A. No. SA92- CA0144, (W.D. Texas).

The state proposes to replace the Edwards Underground Water District and its elected board with a nine-member appointed board that would regulate and administer the Edwards Aquifer. The appointed body would have authority over a larger geographic area than the existing water district, as it includes Medina and Uvalde Counties and portions of other counties not in the water district. However, this expansion does not significantly alter the population since nearly 87 percent of the population in this larger geographic area still is in Bexar County.

Under the proposed system of appointment, three appointees would be selected from the areas west of Bexar County, three appointees would be selected from the areas east of Bexar County, and three appointees would be selected from Bexar County. A variety of different elected or appointed bodies would make the

respective appointments. At this time, none of the bodies responsible for making the appointments have a Hispanic majority among the selecting officials, and only the appointing bodies within Bexar County have any substantial Hispanic representation. Thus, it appears that Hispanic voters will have considerably less influence over the selection of members of the governing body of the Edwards Aquifer through the choices of the appointing authorities than they currently have under the direct-election system for the water district.

We recognize that the state, faced with the environmental concerns underscored by the federal court's determinations in the Sierra Club litigation, had to ensure that a governmental body would have the appropriate powers and the mandate to manage the use of the Edwards Aquifer. The state, however, has not suggested that it was directed by the court ruling in the Sierra Club litigation to dissolve the existing elected governing board for the water district or to change the method of selecting the governing body. Indeed, during the legislative process, consideration was given to alternatives, including utilizing an elected body or a combination of an elected and appointed body to address the environmental concerns. Hispanic legislators in both the House and the Senate proffered proposals that would have continued the state's current practice of using an elected body in the water management system for the Edwards Aquifer. Instead, the state chose to eliminate the elected body for the water district entirely and replace it with an appointed one. While we recognize that, in creating the appointive system, the state sought to assure some minority representation on the Bexar County appointed delegation, under federal law this is not an adequate substitute for existing electoral rights.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. Georgia v. United States, 411 U.S. 526 (1973); Procedures for the Administration of Section 5, 28 C.F.R. 51.52. The existence of some legitimate, nondiscriminatory reasons for the voting change does not satisfy this burden. See Village of Arlington Heights v. Metropolitan Housing Development Corp., 429 U.S. 252, 265-66 (1977); City of Rome v. United States, 446 U.S. 156, 172 (1980); Busbee v. Smith, 549 F. Supp. 494, 516-17 (D.D.C. 1982), aff'd, 459 U.S. 1166 (1983). Our review leads us to conclude that the state has not shown that its interest in managing the Edwards Aquifer, including the allocation of water among the various kinds of users, required eliminating the election of members to the governing body. Nor can we say that the state has met its burden of showing that, in these circumstances, the change from an elected to an appointed board will not "lead to a retrogression in the position of . . . minorities with respect to their effective exercise of the electoral franchise." Beer v. United States, 425 U.S. 130, 141 (1976).

In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that your burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the change insofar as it replaces the previously elected governing body with an appointed board.

We note that under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed change has neither a discriminatory purpose nor effect. 28 C.F.R. 51.44. In addition, you may request that the Attorney General reconsider the objection. See 28 C.F.R. 51.45. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the dissolution of the Edwards Underground Water District with an elected governing body and its replacement by the Edwards Aquifer Authority with an appointed board continues to be legally unenforceable. See Clark v. Roemer, 111 S. Ct. 2096 (1991); 28 C.F.R. 51.10.

We believe that the state can develop a system for managing the Edwards Aquifer in an environmentally-sound manner that would satisfy the requirements of the Voting Rights Act. Should the state decide to seek to adopt a new system, our staff stands ready to discuss further the nature of our concerns with the electoral impact of the submitted change. If a new system is adopted and administrative review under Section 5 is sought, we are prepared to respond on an expedited basis.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action that the State of Texas plans to take concerning this matter. If you have any questions, you should call Delora L. Kennebrew, a Deputy Chief in the Voting Section (202-307-3718).

Since the Section 5 status of the dissolution of the Edwards Underground Water District and the creation of the Edwards Aquifer Authority has been placed at issue in the Sierra Club v. Lujan case, we are providing a copy of this case letter to the court and counsel of record in that case.

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

cc: Honorable Lucius D. Bunton, III
Senior United States District Judge

Counsel of Record

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

April 18, 1994

James P. Finstrom, Esq.
Marion County District Attorney
P. O. Box 276
Jefferson, Texas 75657

Dear Mr. Finstrom:

This refers to the polling place change for Voting Box 12 from the Jefferson Community Center to the Jefferson Volunteer Fire Department Building in Marion County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your response to our request for additional information on February 17, 1994.

We have carefully considered the information you have provided, as well as information and comments from other interested persons. According to the 1990 Census, black persons represent 31 percent of Marion County's total population and 28 percent of its voting age population. The county is governed by a five-member county commission, four of whom are elected from single-member districts. District 3, with a black population of 62 percent, is the only black-majority district of the four. Voting Box 12 is one of two black-majority precincts located in District 3.

The location of the polling place for Voting Box 12 has been an issue that has divided the county along racial lines for some years, with black voters generally supporting the location of a polling place in the western portion of the precinct. In 1988, the first black county commissioner was elected to District 3. Under his leadership, the change in the location of the existing polling place for Voting Box 12 from a temporary building to the Jefferson Community Center occurred in 1991. After his defeat by a white candidate in 1992, in an election that appears to have been characterized by racially polarized voting, the proposed polling place change was initiated.

Information made available to us indicates that in late 1993, the Marion County Commission made the decision to change the polling place location for Voting Box 12 without any meaningful input from the black community regarding the possible effects of the proposed change. Our examination of your submission shows that the Jefferson Community Center is located in a heavily black portion of the precinct, and the proposed site for the new polling place, the Jefferson Volunteer Fire Department Building, is one to two miles away in a heavily white portion of the precinct. In a county with limited public transportation, this proposed location would appear to make it more difficult for black voters to exercise their right to vote.

The county suggests that the polling place change was motivated by concerns of voter safety at the community center. We understand, however, that there have been no incidents identified warranting this concern while the community center was being used as a voting location and that citizens in the county, both black and white, regularly use the community center for activities not related to voting apparently without similar safety concerns. In addition, other options to ensure voter safety would appear to be available short of moving the polling place. Under these circumstances, the county's proffered explanation for the polling place change appears to be pretextual, as the change appears to be designed, in part, to thwart recent black political participation.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. See Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.52). In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that your burden has been sustained in this instance. Therefore, on behalf of the Attorney General I must object to the polling place change for Voting Box 12 from the Jefferson Community Center to the Jefferson Volunteer Fire Department Building.

We note that under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed change has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. In addition, you may request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the polling place change for Voting Box 12 from the Jefferson Community Center to the Jefferson Volunteer Fire Department Building continues to be legally unenforceable. Clark v. Roemer, 111 S.Ct. 2096 (1991); 28 C.F.R. 51.10 and 51.45.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action Marion County plans to take concerning this matter. If you have any questions, you should call Ms. Colleen Kane (202-514-6336), an attorney in the Voting Section.

Sincerely,

Deval L. Patrick
Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

May 9, 1994

The Honorable John Hannah, Jr.
Secretary of State
Elections Division
P. O. Box 12060
Austin, Texas 78711-2060

Dear Mr. Secretary:

This refers to Chapter 1032 (1993), which creates a fourth district court judgeship in Midland County, the 385th Judicial District Court, to be elected at large by designated position with a majority vote requirement for the State of Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your response to our September 24, 1993, request for additional information on March 10, 1994.

We have given careful consideration to the information you have provided, as well as 1990 Census data, comments received from interested persons, and information contained in the state's earlier submission of the creation of additional judicial district courts in other Texas counties and the record in relevant judicial decisions. In Midland County, Hispanic persons constitute 21 percent of the total population and 18 percent of the voting age population. Black persons comprise eight percent of the county's total population and seven percent of the voting age population. Our review of the county's electoral history indicates that black and Hispanic voters are politically cohesive and that county elections are characterized by racially polarized voting patterns.

The election of district court judges by numbered judicial districts functions as a numbered post requirement and has the effect of eliminating the ability of minority voters to utilize single-shot voting. We further note that nomination for this new judicial post is subject to the general requirement in Texas law that a successful candidate must obtain a majority of the votes cast in a party primary. Numerous federal court decisions have chronicled instances where at-large elections, numbered post

requirements, and the runoff system have been adopted in Texas with clearly discriminatory motives, and where their use has produced the intended discriminatory results.

We have analyzed the state's decision to expand the at-large election system in Midland County against this backdrop. We recognize that the state has asserted that it has an interest in adding a fourth judgeship to the circuit in order to relieve an overcrowded court docket. However, the state has not shown that serving that interest need be tied to expanding the existing at-large method of electing district court judges.

Prior to the state's adoption of the change at issue in this submission, the Attorney General had interposed an objection to the expansion of the at-large system in the creation of nine other district court judgeships in the state. In our November 5, 1990, objection letter, we noted that a review of legislative discussions in 1989 revealed that it was commonly understood among Texas legislators that the election of district court judges at large and by numbered post, subject to a runoff requirement, has a racially discriminatory impact. Legislative hearings in March and April of 1993 confirm the widespread view among Texas legislators that the method of electing district court judges in Texas dilutes minority voting strength. Thus, it appears that in creating the 385th Judicial District in Midland County in 1993, the state understood that the method of electing the proposed judgeship would have a racially discriminatory impact but decided to use this election scheme rather than an alternative method of selecting judges that would be fair to racial and ethnic minorities.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.52). In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that your burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the creation of the 385th Judicial District Court in Midland County.

In reaching our decision, we are not unmindful of the recent decision of the United States Court of Appeals for the Fifth Circuit in League of United Latin American Citizens v. Clements, 999 F.2d 831 (5th Cir. 1993) (en banc), cert. denied, 114 S. Ct. 878 (1994), which held that the method of electing district court judges in Midland and other counties in Texas does not violate Section 2 of the Voting Rights Act. We note, however, that the court did not make findings on the issue of whether racial

purpose underlies the adoption or maintenance of the method of electing district court judges in Midland or other Texas counties. Moreover, the LULAC decision does not affect the legal standards to be applied when jurisdictions seek preclearance of voting changes under Section 5. See, e.g., City of Richmond v. United States, 422 U.S. 358, 373-374 n.6. (1975). Thus, in light of our conclusion that the state has failed to meet its burden of showing that the change under submission is not designed to dilute minority voting strength, it is unnecessary to reach the question of whether use of the at-large election system with numbered posts and a majority vote requirement would violate Section 2 of the Voting Rights Act. See 28 C.F.R. 51.55.

We note that under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed change has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. See 28 C.F.R. 51.44. In addition, you may request that the Attorney General reconsider the objection. See 28 C.F.R. 51.45. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the creation of the 385th Judicial District Court in Midland County continues to be legally unenforceable. See Clark v. Roemer, 500 U.S. 646 (1991); 28 C.F.R. 51.10.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the State of Texas intends to take concerning this matter. If you have any questions, you should call George Schneider (202-307-3153), an attorney in the Voting Section.

Sincerely,

Deval L. Patrick
Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

May 31, 1994

The Honorable Ronald Kirk
Secretary of State
Elections Division
P. O. Box 12060
Austin, Texas 78711-2060

Dear Mr. Secretary:

This refers to the following acts of the State of Texas, which create judgeships to be elected at large by designated position with a majority vote requirement and which were submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c:

Chapter 318 (1993), which creates a fifteenth county criminal court at law judgeship in Harris County, and

Chapter 653 (1993), which creates a third county court at law judgeship in Fort Bend County.

As to Chapter 318, we received your partial responses to our September 14, 1993, request for additional information on March 31, April 1, and May 11, 12, and 19, 1994. As to Chapter 653, we received your partial responses to our September 14, 1993, request for additional information on March 29, and May 2, 5, 10 and 19, 1994.

We have given careful consideration to the information you have provided, as well as 1990 Census data, comments received from interested persons, and information contained in the state's earlier submission of the creation of additional judicial district courts in other Texas counties and the record in relevant judicial decisions.

In Harris County, Hispanic persons constitute 22.9 percent of the total population and 20.2 percent of the voting age population. Black persons comprise 18.7 percent of the county's total population and 17.8 percent of the voting age population. Our review of Harris County's electoral history indicates that each of those minority groups is politically cohesive and that county elections are characterized by racially and ethnically polarized voting patterns.

In Fort Bend County, black persons constitute 20.3 percent of the total population and 19.2 percent of the voting age population. Hispanic persons constitute 19.5 percent of the county's total population and 17.9 percent of the voting age population. Our review of Fort Bend County's electoral history indicates that, at least in general elections, black and Hispanic voters are politically cohesive and that county elections are characterized by racially and ethnically polarized voting patterns.

The use of separate courts for election of judges of the courts at issue functions as a numbered post requirement and has the effect of eliminating the ability of minority voters to utilize single-shot voting. We further note that nomination for such judgeships is subject to the general requirement in Texas law that a successful candidate must obtain a majority of the votes cast in a party primary. Numerous federal court decisions have chronicled instances where at-large elections, numbered post requirements, and the runoff system have been adopted in Texas with clearly discriminatory motives, and where their use has produced the intended discriminatory results.

We have analyzed the state's decisions to expand the at-large election systems in Harris County and in Fort Bend County against this backdrop. We recognize that the state has asserted that it has an interest in adding the proposed judgeships in order to relieve overcrowded court dockets. However, the state has not shown that serving that interest need be tied to expanding the existing at-large method of electing the judges.

Prior to the state's adoption of the changes at issue in these submissions, the Attorney General had interposed an objection to the expansion of the at-large system in the creation of nine district court judgeships in the state. In our November 5, 1990, objection letter, we noted that a review of legislative discussions in 1989 revealed that it was commonly understood among Texas legislators that the election of district court

judges at large and by numbered post, subject to a runoff requirement, has a racially discriminatory impact. Legislative hearings in March and April of 1993 confirm the widespread view among Texas legislators that the method of electing district court judges in Texas dilutes minority voting strength.

The method of electing county criminal court and county court at law judges is virtually the same as the method of electing district court judges. Thus, it appears that in creating the courts at issue here, the state was aware that the method of electing the proposed judgeships would have a racially discriminatory impact. Nonetheless, in each case, the state decided to use this election scheme rather than an alternative method of selecting judges that would be fair to racial and ethnic minorities.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.52). In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that your burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the creation of Harris County Criminal Court at Law No. 15 and the creation of Fort Bend County Court at Law No. 3.

In reaching our decision, we are not unmindful of the recent decision of the United States Court of Appeals for the Fifth Circuit in League of United Latin American Citizens v. Clements, 999 F.2d 831 (5th Cir. 1993) (en banc), cert. denied, 114 S. Ct. 878 (1994), which held that the method of electing district court judges in Harris and eight other Texas counties does not violate Section 2 of the Voting Rights Act. It appears, however, that the LULAC plaintiffs litigated only a narrow issue of intent; and they did not raise that issue in the court of appeals (LULAC, 999 F.2d at 838 and n. 3). In any event, the trial in LULAC took place in 1989, several years prior to enactment of the submitted voting changes. Thus, the circumstances leading to adoption of these changes, entailing maintenance and expansion of at-large systems for electing county criminal court and court at law judges, were not addressed at that trial.

Moreover, the LULAC decisions do not affect the legal standards to be applied when jurisdictions seek preclearance of voting changes under Section 5. See, e.g., City of Richmond v. United States, 422 U.S. 358, 373-374 n.6. (1975). Thus, in light

of our conclusion that the state has failed to meet its burden of showing that the changes under submission are not designed to dilute minority voting strength, it is unnecessary to reach the question of whether use of the at-large election system with numbered posts and a majority vote requirement would violate Section 2 of the Voting Rights Act. See 28 C.F.R. 51.55.

We note that under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed changes have neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. See 28 C.F.R. 51.44. In addition, you may request that the Attorney General reconsider the objections. See 28 C.F.R. 51.45. However, as to each of these changes, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, creation of the court in question continues to be legally unenforceable. See Clark v. Roemer, 500 U.S. 646 (1991); 28 C.F.R. 51.10.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the State of Texas intends to take concerning these matters. If you have any questions, you should call George Schneider (202-307-3153), an attorney in the Voting Section.

Sincerely,

Deval L. Patrick
Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

June 13, 1994

David M. Guinn, Esq.
Guinn and Morrison
P. O. Box 97288
Waco, Texas 76798-7288

Dear Mr. Guinn:

This refers to the change in the method of electing school trustees from seven at large to five from single-member districts and two at large, the districting plan, the elimination of numbered posts for the two at-large seats, the implementation schedule, and the establishment of additional voting precincts and polling places for the Mexia Independent School District in Limestone County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your response to our February 7, 1994, request for additional information on April 12, 1994; supplemental information was received on May 10 and 16, and June 7, 1994.

We have carefully considered the information that you have provided, as well as information provided by other interested persons. According to the 1990 Census, the Mexia Independent School District has a total population of 11,656 persons, of whom 25 percent are black and 6.6 percent are Hispanic. Black and Hispanic persons constitute, respectively, 22.9 and 5.1 percent of the voting age population in the school district. While you have not supplied us with voter registration data, by race, you have advised us that there are only 48 registrants in the school district with Spanish surnames. Currently, the school board consists of seven members elected at large by plurality vote to three-year, staggered terms. There are two black members on the school board, one of whom was first elected in May 1994.

The school board began its consideration of changing its at-large method of election after the black community raised concerns that the continued use of at-large elections for school board trustees unnecessarily limited the opportunity for black voters to elect their candidates of choice to the school board. After black leaders threatened to seek a change in the at-large system through voting rights litigation, the school district established a tri-racial study committee to consider alternative methods of election.

Among the plans considered by the tri-racial committee were plans with seven single-member districts (7-0 plan), six single-member districts and one at-large seat (6-1 plan) and five single-member districts and two at-large seats (5-2) plan. The fifteen member tri-racial committee voted unanimously to recommend a 7-0 method of election and districting plan with two districts having substantial black voting age population majorities. The school board, however, rejected that recommendation and decided to adopt a 5-2 method of election instead.

We have reviewed the school board's contention that minority voters will be able to elect their candidates of choice in the two districts in which they constitute a majority of the voting age population. Our analysis of election contests shows an apparent pattern of racially polarized voting in school district elections, which has limited the success of candidates of choice of minority voters. We have weighed the impact that the significantly low level of Hispanic voter registration may have upon the opportunity of minority voters to elect their chosen candidates. In these circumstances, the two districts with bare black voting age population majorities would appear to afford black voters an unnecessarily limited opportunity to elect candidates of their choice.

We also have considered the school district's proffered reasons for selection of the 5-2 method of election, including a desire to maintain continuity on the school board by maintaining the staggered election cycle. However, this criterion was not identified when the tri-racial committee was charged and apparently did not surface until after a 7-0 plan, preferred by the minority community, was recommended. In addition, the school board's reliance on continuity to explain its rejection of the 7-0 alternative appears to be pretextual since the electoral history of the board suggests that it is improbable that every board member would be replaced if all were up for election simultaneously.

Finally, it is apparent that the protection of the interests of incumbents played a significant role in the school district's decision to select a 5-2 method of election. The information

that you have provided suggests that the chosen method of election preserves the existing staggered election cycle as much as possible in order to permit incumbents to run for re-election without competing against each other. While protecting incumbency is not in and of itself an inappropriate consideration, it may not be accomplished at the expense of minority voting potential. See, e.g., Garza v. County of Los Angles, 918 F.2d 763, 771 (9th Cir. 1990), cert. denied, 111 S. Ct. 681 (1991); Ketchum v. Byrne, 740 F.2d 1398, 1408-09 (7th Cir. 1984), cert. denied, 471 U.S. 1135 (1985). Where, as here, the protection afforded incumbents by selecting a method of election specifically designed to maintain incumbents is provided at the expense of minority voters, the school district bears a heavy burden of demonstrating that its choices are based on neutral nonracial considerations and are not tainted, even in part, by an invidious racial purpose.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. See Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.52). In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that your burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the proposed change in method of election for the school district.

We note that under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed change has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. In addition, you may request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the change in the method of election continues to be legally unenforceable. Clark v. Roemer, 111 S. Ct. 2096 (1991); 28 C.F.R. 51.10 and 51.45.

With regard to the remaining voting changes, we understand that those changes are dependent on the now objected-to method of election change. Accordingly, no determination is appropriate with respect to those voting changes. See 28 C.F.R. 51.22(b)

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the Mexia Independent School District plans to take concerning this matter. If you have any questions, you should call Ms. Colleen Kane (202-514-6336), an attorney in the Voting Section.

Sincerely,

Deval L. Patrick
Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

AUG 15 1994

The Honorable Ronald Kirk
Secretary of State
221 E. 11th Street
Third Floor
Austin, Texas 78701

Dear Mr. Secretary:

This refers to Chapter 38 (1987), which creates, and provides an implementation schedule for, four criminal court judgeships (Nos. 7-10); and Chapter 354 (1993), which abolishes Criminal Court No. 5, creates a new Criminal Court of Appeals, and establishes candidate qualifications and compensation for that court in Tarrant County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your submissions on July 14, 1994.

We have given careful consideration to the information you have provided, as well as data from the 1990 Census, comments received from interested persons, and information in our files, as well as the record in relevant judicial decisions. The Attorney General does not interpose any objection to the specified changes in Chapter 354 (1993). However, we note that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the changes. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41).

With respect to the voting changes in Chapter 38 (1987), I cannot come to the same conclusion. In Tarrant County, black persons constitute 12 percent of the total population as do Hispanic persons. Our review of the county's electoral history, beginning in 1982, indicates that no black person and only one Hispanic has ever served as a county criminal court judge.

The four additional county criminal court judgeships established by Chapter 38 are to be elected at large by numbered place. The election of judges by such numbered judicial districts has the effect of eliminating the ability of minority voters to utilize single-shot voting. Nomination for these judicial posts is subject as well to the general requirement in Texas law that a successful candidate must obtain a majority of the votes cast in a party primary.

Numerous federal court decisions prior to 1987 chronicled instances where at-large elections, numbered place requirements, and the runoff system were adopted in Texas for clearly discriminatory motives, and where their use has produced the intended discriminatory results. Tarrant County is among those jurisdictions where the federal courts have found that these electoral factors have resulted in discrimination in violation of Section 2 of the Voting Rights Act, 42 U.S.C. 1973. In addition, review of our records shows that prior to 1987 the Attorney General had interposed objections under Section 5 on 38 occasions to the adoption of numbered posts and on 24 occasions to adoption of a majority vote requirement by various Texas jurisdictions.

We have analyzed the state's decision to expand the at-large system for electing Tarrant County criminal court judges in 1987 against this background. It appears that in creating Tarrant County Criminal Court Nos. 7 through 10 in 1987 the state understood that the method of electing the proposed judgeships would have a racially discriminatory impact but decided to use this election scheme rather than an alternative method of selecting judges that would be fair to racial and ethnic minorities. We recognize that the state asserts that it had an interest in adding these four courts in order to relieve an overcrowded docket. However, the state has not shown that serving that interest need be tied to expanding the existing at-large system of electing these judges or the additional requirement that judicial candidates qualify for particular numbered judicial posts.

In reaching our decision, we are not unmindful of the recent decision of the United States Court of Appeals for the Fifth Circuit in League of United Latin American Citizens v. Clements, 999 F.2d 831 (5th Cir. 1993) (en banc), cert. denied, 114 S. Ct. 878 (1994), which held that the method of electing district court judges in Tarrant and other counties does not violate Section 2 of the Voting Rights Act. We note, however that criminal court judgeships in Tarrant County were not among the offices at issue in that litigation. Nor does the record in that case include evidence concerning the legislation at issue in this submission or recent judicial election contests.

Moreover, the LULAC decisions do not affect the legal standards to be applied when jurisdictions seek preclearance of voting changes under Section 5. See, e.g., City of Richmond v. United States, 422 U.S. 358, 373-374 n.6. (1975). Thus, in light of our conclusion that the state has failed to meet its burden of showing that the changes under submission are not designed to dilute minority voting strength, it is unnecessary to reach the question of whether use of the at-large election system with numbered posts and a majority vote requirement would violate Section 2 of the Voting Rights Act. See 28 C.F.R. 51.55.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.52). In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that your burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the creation of, and implementation schedule for, Tarrant County Criminal Court Nos. 7 through 10 as provided in Chapter 38 (1987).

Since the Section 5 status of Chapter 38 (1987) and Chapter 354 (1993) is a matter before the court in Texas v. United States, No. 1:94CV01529 (D.D.C.), we are providing copies of this letter to the court and counsel of record in that case.

Sincerely,

Deval L. Patrick
Assistant Attorney General
Civil Rights Division

cc: Honorable Thomas Penfield Jackson
Honorable John Garrett Penn
United States District Judges

Honorable Harry T. Edwards
United States Circuit Judge

Renea Hicks, Esq.

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

August 22, 1994

Arturo G. Michel, Esq.
Bracewell & Patterson
South Tower Pennzoil Place
711 Louisiana Street
Suite 2900
Houston, Texas 77002-2781

Dear Mr. Michel:

This refers to the change in the method of electing school trustees from seven at large to five from single-member districts and two at large, the districting plan, the implementation schedule and a polling place change for the Edna Independent School District in Jackson County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your response to our May 2, 1994 request for additional information on July 6, 1994; supplemental information was received on August 12, 1994.

The Attorney General does not interpose any objection to the polling place change. However, we note that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the change. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41).

With regard to the method of election change, we have carefully considered the information that you have provided, as well as information provided by other interested persons. According to the 1990 Census, the Edna Independent School District has a total population of 7,531 persons, of whom 22 percent are Hispanic and 13 percent are black. Hispanic and black persons constitute, respectively 19.2 and 12.8 percent of the voting age population in the school district. Currently, the school board consists of seven members elected at large by plurality vote to three year, staggered terms. There is one Hispanic member of the school board and one black member of the school board. They were elected May 7, 1994, using the unprecleared method of election. Prior to this election, no minorities ever have served on the school board.

The school board began its consideration of changing its at-large method of election after the minority community raised concerns that the continued use of at-large elections for school board trustees unnecessarily limited the opportunity for minority voters to elect their candidates of choice to the school board. After minority leaders expressed their concern, the school district appointed a tri-racial committee to consider alternative methods of election.

Among the plans considered by the tri-racial committee were plans with seven single-member districts (7-0 plan), six single-member districts and one at-large seat (6-1 plan), five single-member districts and two super districts (5-2 super) and five single-member districts and two at-large seats (5-2 plan). The fourteen member tri-racial committee voted nine to five in favor of the 7-0 plan. The 7-0 alternative provided for one district with a black majority voting age population (64.7 percent) and one district with an Hispanic majority voting age population (52.7 percent). The school board, however, rejected the recommendation by the tri-racial committee and adopted the 5-2 method of election instead. The 5-2 plan provides for one district with a black majority voting age population (52.3 percent) and a district with an Hispanic voting age population of 46.0 percent.

We have reviewed the board's contention that minority voters will be able to elect their candidates of choice in the two districts in which they constitute a majority of the voting age population. The board has not provided sufficient election data to suggest that election contests for school board are not characterized by a pattern of racially polarized voting or that minority voters are cohesive. The board concedes that the three elections upon which it relies to support its contention that the minority majority districts provide minority voters with an "equal chance" to elect candidates of choice are insufficient to predict future minority electoral success. Our analysis of school board election contests shows an apparent pattern of racially polarized voting and mixed results with regard to cohesion among black and Hispanic voters. Under these circumstances, the method of election adopted by the school board appears to afford minority voters an unnecessarily limited opportunity to elect candidates of their choice.

We also have considered the school district's proffered reasons for selecting the 5-2 method of election, including a desire to provide minority voters with an "equal opportunity" to elect candidates of choice but not a guarantee. While there is no requirement to guarantee minority voters can elect candidates of choice, there is a requirement to provide minority voters with a reasonable opportunity to do so. The board defined a district

that provides an "equal opportunity" as one that has 50 percent or more minority population. However, in applying this criterion, the board appears to have chosen the method of election that provides for majority minority districts in which the dominant minority group is as near to 50 percent as possible. No consideration appears to have been given to the apparent pattern of racially polarized voting or inconsistent cohesion between black and Hispanic voters. Based on our investigation, it does not appear that districts, in which the dominant minority group is as near to 50 percent as possible, provide minority voters with a reasonable opportunity to elect candidates of choice.

Finally, it is apparent that the protection of the interests of incumbents played a significant role in the school district's decision to select a 5-2 method of election. The information you have provided suggests that placing multiple incumbents in the same districts was unavoidable due to the location of their residences. The proposed plan provides as many as four incumbents with the opportunity to be re-elected. By contrast, the 7-0 plan would have limited the number of incumbents who could be re-elected to two. While protecting incumbency is not in and of itself an inappropriate consideration, it may not be accomplished at the expense of minority voting potential. See, e.g., Garza v. County of Los Angeles, 918 F.2d 763, 771 (9th Cir. 1990), cert. denied, 111 S.Ct. 681 (1991); Ketchem v. Byrne, 740 F.2d 1398, 1408-9 (7th Cir. 1984), cert. denied, 471 U.S. 1135 (1985). Where, as here, the protection afforded incumbents by selecting a method of election specifically designed to maintain incumbents is provided at the expense of minority voters, the school district bears a heavy burden of demonstrating that its choices are based on neutral, nonracial considerations and are not tainted, even in part, by an invidious racial purpose.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. See Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.52). In light of the considerations discussed above, I cannot conclude, as I must under Section 5 of the Voting Rights Act, that your burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the proposed change in the method of election for the school district.

We note that under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed change has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color or membership in a language minority group. In addition, you may request that the Attorney General reconsider the objection. However, until the

objection is withdrawn or a judgment from the District of Columbia Court is obtained, the change in the method of election continues to be legally unenforceable. Clark v. Roemer, 111 S.Ct. 2096 (1991); 28 C.F.R. 51.10 and 51.45.

With regard to the remaining changes, we understand that those changes are dependent on the now objected-to method of election change. Accordingly, no determination is appropriate with respect to those voting changes. See 28 C.F.R. 51.22(b).

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the action the Edna Independent School District plans to take concerning this matter. In that regard, I have asked the Voting Section to consider whether the at-large system violates Section 2 of the Voting Rights Act, should the school district determine to take no further action toward changing that system. If you have any questions, you should call Ms. Colleen Kane (202-514-6336), an attorney in the Voting Section.

Sincerely,

Stuart J. Ishimaru
Acting Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

September 12, 1994

Paul Lyle, Esq.
Owen, Lyle, Voss & Owen
P.O. Box 328
Plainview, Texas 79073-0328

Dear Mr. Lyle:

This refers to the change in the method of electing the five councilmembers from at large to a cumulative voting system for the City of Morton in Cochran County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your response to our May 20, 1994, request for additional information on July 14, 1994.

We have carefully considered the information that you have provided, as well as information provided by other interested persons. According to the 1990 Census, the City of Morton has a total population of 2,597 persons, of whom 51.7 percent are Hispanic and 7.4 percent are black. The city's minority population suffers from a history of discrimination which appears to have resulted in depressed education and registration levels. For example, over 13 percent of Hispanic citizens in the county do not speak English well enough to participate in the political process without Spanish language materials. In addition, based on the registration rates for the county, minority voters are approximately 34 percent of the city's registered voters. The electoral history of the city suggests that voting is polarized along racial and ethnic lines to such a degree that no minority person has ever served as a councilmember.

The city council began its consideration of changing its at-large method of election after private voting rights litigation was filed by statewide LULAC. Two possible alternatives emerged -- a single-member districting plan, including two majority minority districts, and a cumulative voting system.

The city council then considered both plans. It adopted cumulative voting despite the fact that the minority population is geographically concentrated in such a way that it is relatively simple to draw two single-member districts with Hispanic voting age populations at or above 65 percent. A single public hearing to explain the use of the cumulative voting system was held. The hearing was advertised only in English and it was not attended by any minority residents. There was no effort to solicit specifically the views of the local minority community contemporaneously with the council's consideration of these plans. No investigation was made into whether or not the minority community had a complete understanding of the cumulative voting system.

After this system was adopted, the city did not engage in any type of bi-lingual voter education program to ensure that minority voters would understand it. There has been no Spanish-language outreach to the minority community in the form of public service announcements, advertisements, mailers, demonstrations, etc., to provide the minority community with the information it needs to use effectively the cumulative voting system.

These facts bear heavily on our consideration of the ability of minority voters to elect candidates of their choice under the proposed system, and also on the reasons for the city's adoption of this system, as opposed to available alternatives.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. See Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.52). The existence of some legitimate, nondiscriminatory reasons for the voting change does not satisfy this burden. See Village of Arlington Heights v. Metropolitan Housing Development Corp., 429 U.S. 252, 265-66 (1977); City of Rome v. United States, 446 U.S. 156, 172 (1980); Busbee v. Smith, 549 F. Supp. 494, 516-17 (D.D.C. 1982), aff'd, 459 U.S. 1166 (1983). In light of the considerations discussed above, I cannot conclude as I must under the Voting Rights Act, that your burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the proposed change in the method of election for the city council.

We note under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed change has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color or membership in a language minority group. In addition, you may request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the change in the method of election continues to be legally unenforceable. Clark v. Roemer, 500 U.S. 646 (1991); 28 C.F.R. 51.10 and 51.45.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the action the City of Morton plans to take concerning this matter. In that regard, I have asked the Voting Section to consider whether the at-large system violates Section 2 of the Voting Rights Act, should the city determine to take no further action toward changing that system. If you have any questions, you should call Ms. Colleen Kane (202-514-6336), an attorney in the Voting Section.

Sincerely,

Kerry Scanlon
Acting Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

OCT 21 1994

Lloyd Garza, Esq.
City Attorney
Ms. Norma Rodriguez
City Clerk
P. O. Box 839966
San Antonio, Texas 78283-3966

Dear Mr. Garza and Ms. Rodriguez:

This refers to the procedures for conducting the August 13, 1994, special referendum election, and 39 voting precinct consolidations and the selection of polling places therefor, two early voting location changes, extended hours for early voting, 16 polling place changes, and a name change for the 12000 Perrin Oaks Center for the August 13th special election in the City of San Antonio, Bexar County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your response to our August 5, 1994, request for additional information on August 22, 1994. On August 9, 1994, we received your related submission of additional precinct and polling place changes for the special election.

We carefully have considered the information that you have provided, as well as information provided by other interested persons. According to the 1990 Census, the City of San Antonio has a total population of 935,933 persons, of whom 55.6 percent are Hispanic and 6.8 percent are black. Three-quarters of San Antonio's population speaks Spanish at home, and nearly four out of every ten (37.1 percent) of these Spanish speakers require Spanish-language assistance to participate effectively in elections.

In considering whether the implementation of bilingual procedures satisfy Section 5 of the Voting Rights Act, the Attorney General will pay "particular attention . . . to the requirements of . . . Sections 4(f)(4) and 203(c) . . . of the Act . . . ." 28 C.F.R. 51.55 (a); See also Apache County High

School District No. 90 v. United States, Civil Action No. 77-1845 (D.D.C. 1980). The guidelines for the implementation of Sections 4(f)(4) and 203 of the Voting Rights Act state that the test for compliance with regard to bilingual procedures is whether or not the materials and assistance are provided in a way that allows members of the language minority group to be effectively informed of and participate effectively in voting-concerned activities, 28 C.F.R. 55.2(b)(1). We note that the city's bilingual procedures provide that "all election materials will be prepared bilingually."

While the city provided assistance and many materials bilingually for the August 13, 1994, special referendum election, it provided the principal substantive document concerning the referendum, the 2050 Plan, in English only.

The availability of the 2050 Plan in Spanish was critical to the ability of Hispanic voters to participate effectively in the election. Given that the ballot question, as well as the election literature, advertisements, and other information provided to the voters by the city specifically and repeatedly referred to the 2050 Plan, the Applewhite issue was voted upon in the context of the 2050 Plan. In addition, the new Applewhite project could easily have been confused with the 1991 Applewhite project, although the two projects were substantially different. The 2050 Plan contained the only substantive explanation of these differences.

You advise that the city distributed the 2050 Plan in English because it was "important for voters to know the components of the plan of which the project is a part." Because of the importance of the plan, the city took special steps to make it available in English, and distributed hundreds of copies. The city sponsored announcements over local television which specifically referred to the 2050 Plan. These announcements were in English only. Once the city provided the 2050 Plan to the public, it had an obligation to provide it so that all voters would benefit from its distribution, not only those who are proficient in English. The city's failure to do so constituted a violation of the Voting Rights Act.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. See Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.52). The existence of some legitimate, nondiscriminatory reasons for the voting change does not satisfy this burden. See Village of Arlington Heights v. Metropolitan Housing Development Corp., 429 U.S. 252, 265-66 (1977); City of Rome v. United States, 446 U.S. 156, 172 (1980); Busbee v. Smith, 549 F. Supp. 494, 516-17 (D.D.C. 1982), aff'd, 459 U.S. 1166 (1983). In light of the

considerations discussed above, I cannot conclude as I must under the Voting Rights Act, that your burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the procedures for conducting the August 13th special election.

We note under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed change has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color or membership in a language minority group. In addition, you may request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the procedures for conducting the August 13, 1994, special referendum election continue to be legally unenforceable. Clark v. Roemer, 500 U.S. 646 (1991); 28 C.F.R. 51.10 and 51.45.

The Attorney General will make no determination at this time with regard to the voting precinct, early voting and polling place changes as they are directly related to the August 13, 1994, special election procedures. See 28 C.F.R. 51.22(b).

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the action the City of San Antonio plans to take concerning this matter. If you have any questions, you should call Ms. Colleen Kane (202-514-6336), an attorney in the Voting Section.

Sincerely,

Deval L. Patrick
Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General *Washington, D.C. 20035*

October 31, 1994

The Honorable Don Tymrac
Mayor, City of Karnes City
Post Office Box 399
Karnes City, Texas 78118

Dear Mayor Tymrac:

This refers to the increase in the number of officials on the municipal governing body from two to five, the procedures for conducting the August 13, 1994, special election for the three additional officials, the adoption of staggered terms and the implementation schedule for the City of Karnes City in Karnes County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your responses to our July 22, 1994, request for additional information on September 1 and October 14, 17, 20 and 25, 1994; supplemental information was received on October 27, 1994.

We have carefully considered the information you have provided, as well as Census data and information and comments from other interested persons. At the outset, we note that the expansion of the city's governing body occasioned by the establishment of the three additional positions must be analyzed in the context of the method used to elect the governing body. City of Lockhart v. United States, 460 U.S. 125, 131-132 (1983). See also McCain v. Lybrand, 465 U.S. 236, 255 n.27 (1984). Under the existing electoral system in Karnes, two city commissioners and the mayor are elected at large to concurrent, two-year terms by plurality vote. Elections in Karnes exhibit a pattern of polarized voting, and significant disparities appear to exist in the rates at which Hispanic and Anglo residents register and vote. Moreover, the depressed political participation rates among Hispanics appear attributable largely to a history of discrimination, which continues to be reflected in the disparities in socio-economic conditions that exist between the city's Hispanic and Anglo residents. Thus, in the totality of circumstances, it appears that Hispanic residents in the city do not participate equally in the political process and have a limited opportunity to elect candidates of their choice to the city's governing body.

The city determined to eliminate the existing system and expand the size of the city's governing body. Rather than do so in a manner fair to all of the city's citizens, however, the city added positions to the at-large electoral system. Indeed, the expanded governing body will be elected with staggered terms of office (2-3), which, under the at-large system, would have the effect of limiting the effective use of single-shot voting. The city has not advanced any persuasive non-racial reasons for the use of at-large elections for the expanded governing body and there clearly were alternative methods for electing an expanded body that would not similarly submerge Hispanic voting strength. It appears, furthermore, that little or no effort was made by the city to solicit the views of the Hispanic community regarding alternative methods of electing the enlarged governing body.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.52). In addition, a submitted change may not be precleared if its implementation would lead to a clear violation of Section 2. See 28 C.F.R. 51.55(b). In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that your burden has been sustained in this instance, and that the proposed expansion of the city's governing body satisfies the preclearance requirements of the Act. Therefore, on behalf of the Attorney General, I must object to the increase in the number of officials insofar as the city proposes to elect the three additional positions under an at-large election scheme with staggered terms.

We note that under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed changes have neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. See 28 C.F.R. 51.44. In addition, you may request that the Attorney General reconsider the objection. See 28 C.F.R. 51.45. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the increase in the number of officials from two to five continues to be legally unenforceable. See Clark v. Roemer, 111 S. Ct. 2096 (1991); 28 C.F.R. 51.10.

With regard to the procedures for conducting the August 13, 1994, special election and the implementation schedule, the Attorney General will make no determination because these matters are directly related to the objected-to increase in the number of officials on the city's governing body. See 28 C.F.R. 51.22(b).

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the City of Karnes City plans to take concerning these matters. If you have any questions, you should call Ms. Zita Johnson-Betts (202-514-8690), an attorney in the Voting Section.

Sincerely,

Deval L. Patrick
Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

October 31, 1994

Ms. Mary Anne Wyatt
Golden Crescent Regional
Planning Commission
P. O. Box 2028
Victoria, Texas 77902

Dear Ms. Wyatt:

This refers to the creation of the Gonzales County Underground Water Conservation District; the districting plan; the establishment of polling places; the procedures for conducting the May 7, 1994, special election for the confirmation of the creation of the district, the approval to assess an ad valorem tax, and the election of directors; and the arrangement that Gonzales County conduct the May 7, 1994, special election for the district in Gonzales County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your response to our request for additional information on August 30, 1994; supplemental information was received on October 18, 19 and 27, 1994.

The Attorney General does not interpose any objection to the creation of the Gonzales County Underground Water Conservation District; the procedures for conducting the May 7, 1994, special election for the confirmation of the creation of the district and the approval to assess an ad valorem tax; and the arrangement that Gonzales County conduct the May 7, 1994, special election for the district. However, we note that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the changes. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41).

With regard to the districting plan, we carefully have considered the information that you have provided, as well as information provided by other interested persons. According to your submission, the Gonzales County Underground Water Conservation District has a total population of 16,587, of whom 36.5 percent are Hispanic and 9.4 percent are black.

The water district's directors will be elected from five single-member districts. The proposed districting plan provides for districts which are grossly malapportioned. The City of Gonzales comprises a single district that is two and a half times the size of any of the other districts (6,547 versus 2,611). That district contains nearly half of the minority population in the entire water district, but still has an Anglo voting age majority. Indeed, despite the large minority population, the proposed districting plan creates only one district with a majority combined voting age population, and even that majority (51.4 percent) appears too narrow to provide minority voters with an equal opportunity to elect candidates of their choice. The consequence of the proposed districting plan is that minority voting strength is diluted.

Those involved in drawing these districts were aware, if only from extensive media coverage on the subject, of the need to protect minority voting rights specifically where water districts are involved. Nevertheless, the minority community appears effectively to have been frozen out of the process which produced the proposed districting plan. None of the public hearing or meeting notices were posted in Spanish. There was no attempt to involve the minority community in the process or solicit their views with regard to particular boundary line choices. Nor was any attempt made to explore possible alternative districting plans that would have allowed minority voters an equal opportunity to participate in the electoral process and to elect candidates of their choice. For example, it appears that under a fairly drawn plan of single-member districts, minority voters would constitute effective majorities in two of the five districts.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. See Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.52). The existence of some legitimate, nondiscriminatory reasons for the voting change does not satisfy this burden. See Village of Arlington Heights v. Metropolitan Housing Development Corp., 429 U.S. 252, 265-66 (1977); City of Rome v. United States, 446 U.S. 156, 172 (1980); Busbee v. Smith, 549 F. Supp. 494, 516-17 (D.D.C. 1982), aff'd, 459 U.S. 1166 (1983). In addition, the Section 5 Procedures (28 C.F.R. 51.55(b)(2)) require that preclearance be withheld where a change presents a clear violation of the results standard incorporated in Section 2 of the Voting Rights Act, 42 U.S.C. 1973. In light of the

considerations discussed above, I cannot conclude as I must under the Voting Rights Act, that your burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the proposed districting plan for the Gonzales County Underground Water Conservation District.

We note that under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed change has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color or membership in a language minority group. In addition, you may request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the districting plan continues to be legally unenforceable. Clark v. Roemer, 500 U.S. 646 (1991); 28 C.F.R. 51.10 and 51.45.

The Attorney General will make no determination at this time with regard to the establishment of polling places for the districts or the May 7, 1994, election of directors as they are directly related to the districting plan. See 28 C.F.R. 51.22(b).

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the action the Gonzales County Underground Water Conservation District plans to take concerning this matter. If you have any questions, you should call Ms. Colleen Kane (202-514-6336), an attorney in the Voting Section.

Sincerely,

Deval L. Patrick
Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General Washington, D.C. 20530

Galen R. Elolf, Ed.D.
Superintendent of Schools
Judson Independent School District
P.O. Box 249
Converse, Texas 78109

NOV 18 1994

Dear Dr. Elolf:

This refers to the procedures for conducting the November 19, 1994, special bond election and two early voting locations for the Judson Independent School District in Bexar County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your submission on October 20, 1994; supplemental information was received on November 15, 1994.

We have carefully considered the information you have provided, as well as information from other interested persons. According to the 1990 Census, the school district has a total population of 58,190, of whom 24 percent are Hispanic and 13 percent are black. According to the 1990 Census, countywide approximately 85 percent of Hispanic citizens of voting age speak Spanish at home and, in the Judson School District, approximately one-third of those persons of voting age who speak Spanish at home require Spanish-language assistance to participate effectively in elections.

Under Sections 4(f)(4) and 203 of the Voting Rights Act, 42 U.S.C. 1973b(f)(4) and 1973aa-1a, whenever the Judson School District provides any "materials or information relating to the electoral process ... it shall provide them in the language of the applicable language minority group as well as in the English language." Under Section 5, when a jurisdiction subject to these sections submits a request for preclearance of a special election, one factor the Attorney General considers is whether the election materials and information for that election will be provided bilingually. In that regard, we are guided by the Attorney General's guidelines for implementation of Sections

4(f)(4) and 203, which state that covered jurisdictions must take all reasonable steps to provide bilingual materials in such a way as to allow minority group members "to be effectively informed of and participate effectively in voting-connected activities." 28 C.F.R. 55.2(b)(1).

Our review indicates that an important part of the election process for the November 19, 1994, special bond election has been the distribution of various materials by the school district, as well as by a committee organized by the school district, that sought to educate voters on the proposed bond issue. These materials included several newsletters, a one-page summary sheet, "door-hanger" advertisements, and posters. However, with the exception of the summary sheet, none of these materials were provided in Spanish. In addition, numerous informational meetings were conducted, but apparently only one included Spanish translation. While the school district published the official election notice in both English and Spanish, and the ballot is bilingual, Sections 4(f)(4) and 203 are not narrowly limited to requiring the translation of materials specifically concerned with the calling of an election and polling place procedures. 28 C.F.R. 55.15.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. See Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.52). In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that your burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the holding of the November 19, 1994, special bond election.

We note that under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed change has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. In addition, you may request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the special election continues to be legally unenforceable. Clark v. Roemer, 500 U.S. 646 (1991); 28 C.F.R. 51.10 and 51.45.

In this regard, we note that we were not able to make the requisite Section 5 decision regarding this bond election until now because the school district did not make the necessary submission to the Attorney General until about a month ago, thus not allowing the Attorney General the full 60-day review period

granted by Section 5. Nevertheless, we wish to emphasize that because the school district has not received preclearance for this election, federal law does not permit it to be conducted.

Finally, with regard to the submitted early voting locations, no determination under Section 5 is necessary since they are directly related to the objected-to change. 28 C.F.R. 51.22(b).

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the Judson Independent School District plans to take concerning this matter. If you have any questions, you should call Mark A. Posner, Special Section 5 Counsel, at (202) 307-1388.

Sincerely,

Deval L. Patrick
Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

DEC 8 1994

Galen R. Elolf, Ed.D.
Superintendent of Schools
Judson Independent School District
P.O. Box 249
Converse, Texas 78109

Dear Dr. Elolf:

This refers to your request that the Attorney General reconsider and withdraw the November 18, 1994, objection under Section 5 of the Voting Rights Act, 42 U.S.C. 1973c, to the procedures for conducting the November 19, 1994, special bond election for the Judson Independent School District in Bexar County, Texas. We received your reconsideration request on November 29, 1994, and, as you further requested, we have undertaken to make an expeditious decision on whether to continue or withdraw the objection.

As set forth in our November 18 determination letter, the objection was interposed because the school district, in preparing to conduct the bond election, provided materials and information relating to the election process predominantly in the English language but not in Spanish, contrary to the bilingual requirements of Sections 4(f)(4) and 203 of the Voting Rights Act, 42 U.S.C. 1973b(f)(4) and 1973aa-1a. In reviewing a special election submitted for Section 5 preclearance, an important consideration is whether a jurisdiction covered by the Act's bilingual provisions will conduct the election in compliance with those provisions.

In the reconsideration request, the school district contends that the English-only publicity was prepared and distributed in part by a campaign committee composed of private individuals acting independently of the school district. Our further review of this issue pursuant to the reconsideration request, however, confirms that the committee was closely aligned with, and not independent of, the school district. The committee was formed at the instigation of the school district, the school district

played a major role in selecting the committee's members, and district officials then provided important advice and assistance to the committee regarding the committee's activities. Written materials prepared by the committee included articles written by you in your role as school superintendent. The committee newsletter identified the school district as the return addressee, and the newsletter was mailed using the school district's post office nonprofit mailing permit.

The school district points out that the English-only newsletter it published regarding the election also included articles unrelated to the election, and other newsletters published by the district do not relate to any election. However, this does not alter the fact that the newsletter in question directly addressed the bond election process.

Finally, the school district contends that there only is a very slight need for bilingual materials among the Hispanic electorate of the district, thus apparently suggesting that the district need not provide any election materials bilingually. Our review of the Census data does not support that proposition. Well over 2,000 voting age citizens of the school district require bilingual assistance. While it may be that these persons comprise only a minority of the district's entire Hispanic population, that provides no basis under the law for concluding that important election materials may be provided in English but not in Spanish.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. See Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.52). In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that your burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must decline to withdraw the objection to the holding of the November 19, 1994, special bond election.

As we previously have advised, under Section 5 the school district has the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed change has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the special election continues to be legally unenforceable. Clark v. Roemer, 500 U.S. 646 (1991); 28 C.F.R. 51.10 and 51.45.

Finally, we understand that the school district has selected a new date (January 28, 1995) for conducting a special referendum election on the proposed bond should the objection not be withdrawn. If the school district intends to proceed with that election, it should seek Section 5 preclearance immediately and we will make every effort to expedite our review of that submission. In this regard, we note that in order to obtain Section 5 preclearance for the new election, the district will need to remedy the absence of bilingual information with regard to the November election.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the Judson Independent School District plans to take concerning this matter. If you have any questions, you should call Mark A. Posner, Special Section 5 Counsel, at (202) 307-1388.

Sincerely,

Loretta King

Loretta King
Acting Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, DC 20035

February 13, 1995

David M. Guinn, Esq.
Guinn and Morrison
P. O. Box 97288
Waco, Texas 76798-7288

Dear Mr. Guinn:

This refers to your request that the Attorney General reconsider the June 13, 1994, objection under Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c, to the change in method of electing school trustees from seven at large to five from single-member districts and two at large for the Mexia Independent School District in Limestone County, Texas. We received your request on December 13, 1994.

We have reconsidered our earlier determination regarding this matter based on the information and arguments that you have advanced in support of your request, along with other information in our files and comments from other interested persons. Our review indicates that there has been no "substantial change in operative fact or relevant law" since the time we interposed the objection. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.46). Your request does not contain any factual information that addresses or rebuts the conclusions we previously reached regarding the unnecessarily limited opportunity afforded to black voters under the objected-to plan. For example, your request provides no information that suggests the apparent pattern of racially polarized voting in school board elections and the significantly low level of Hispanic voter registration will not have an adverse impact on the ability of black voters to elect candidates of their choice in the majority minority districts.

Without providing any new or additional facts to suggest that the majority minority districts will provide black voters with a reasonable opportunity to elect candidates of their

choice, the school district opines that by her objection, the Attorney General has adopted a policy that requires the school district to "maximize minority percentages without regard to any other legislative value." Under Section 5, a jurisdiction is not required to adopt a plan that maximizes minority voting strength; however, by the same token, a jurisdiction also is not free to reject a particular plan that enhances minority voting strength without a legitimate, non-racial justification for doing so.

Although the school district does not provide the specifics in its request, it implies that there was some "legislative value" in rejecting the 7-0 alternative unanimously recommended by the fifteen member tri-racial committee and adopting the objected-to plan in its place. During the course of our previous investigation of the objected-to plan, the school district argued that maintaining continuity on the board and protecting incumbents were among those values. Our analysis, however, revealed that serving these particular "legislative values" would be at the expense of black voting strength in the majority minority districts. We concluded that the school district's "legislative values" were pre-textual and that the objected-to plan was adopted, at least in part, to minimize black voting strength.

Absent entirely from the school district's request for reconsideration is any supporting documentation or any information that would enable us to conclude that black voters residing in the majority minority districts have a reasonable opportunity to elect candidates of their choice. Under these circumstances, the school district has not met its burden of demonstrating that the choices underlying the adoption of the objected-to plan over a plan that would have provided black voters with a reasonable opportunity to elect two of the seven school board members were not tainted, even in part, by an invidious discriminatory purpose. See Village of Arlington Heights v. Metropolitan Housing Development Corp., 429 U.S. 252, 265-66 (1977); City of Rome v. United States, 446 U.S. 156, 172 (1980); Busbee v. Smith, 549 F. Supp. 494, 516-17 (D.D.C. 1982), aff'd, 459 U.S. 1166 (1983).

In light of the considerations discussed above, I remain unable to conclude that the Mexia Independent School District has carried its burden of showing that the submitted change has neither a discriminatory purpose nor a discriminatory effect. See Georgia v. United States, 411 U.S. 526 (1973); 28 C.F.R. 51.52. Therefore, on behalf of the Attorney General, I must decline to withdraw the objection to the change in method of election for the Mexia Independent School District.

As we previously advised, you may seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed change has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. We remind you that until such a judgment is rendered by that court, the objection by the Attorney General remains in effect and the proposed change continues to be legally unenforceable. See Clark v. Roemer, 500 U.S. 646 (1991); 28 C.F.R. 51.10, 51.11, and 51.48(c) and (d).

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the Mexia Independent School District plans to take concerning this matter. In that regard, I have asked the Voting Section to consider whether the at-large system violates Section 2 of the Voting Rights Act, should the school district determine to take no further action toward changing that system. If you have any questions, you should call Colleen M. Kane (202) 514-6336, an attorney in the Voting Section.

Sincerely,

Loretta King

Loretta King
Acting Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

February 17, 1995

The Honorable Ronald Kirk
Secretary of State
State of Texas
Elections Division
P.O. Box 12060
Austin, Texas 78711-2060

Dear Mr. Secretary:

This refers to the bilingual procedures to be used in the implementation of the National Voter Registration Act of 1993 ("NVRA"), 42 U.S.C. 1973gg, for the State of Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. Other changes with respect to the NVRA implementation of the State of Texas, provided for by Administrative Rule 1 T.A.C. §81.401, were precleared by our letters of December 12, 1994, and February 2, 1995. Additional information with respect to your submission was received on December 19, 1994.

We have carefully considered the information that you have provided, as well as information provided by other interested persons. According to the 1990 Census, the state's 2,054,103 Hispanic voting age citizens constitute 18 percent of the state's total citizen voting age population. Of Hispanic voting age citizens, 86 percent speak Spanish at home and 33 percent require Spanish-language assistance to participate effectively in elections.

In considering whether the implementation of bilingual procedures satisfies Section 5 of the Voting Rights Act, the Attorney General will pay "particular attention . . . to the requirements of . . . Sections 4(f)(4) and 203(c) . . . of the Act . . . ." 28 C.F.R. 51.55(a). The Attorney General's guidelines for the implementation of Sections 4(f)(4) and 203(c) of the Voting Rights Act state that the test for compliance with regard to bilingual procedures is whether the jurisdiction has taken "all reasonable steps" to ensure that materials are provided in a way that allows members of the language minority group to be effectively informed of and participate effectively in voting-concerned activities, 28 C.F.R. 55.2(b)(1) and (2).

One step in ensuring that language minority members are able to participate effectively in voting-concerned activities is consultation with members of the applicable language minority group with respect to the translation of materials, 28 C.F.R. 55.19(b). In this regard, we note that although members of the language minority group were included in some of the meetings of Texas' National Voter Registration Task Force, they were consulted only minimally as to the actual translations of registration materials.

Another step in ensuring that language minority members are able to participate effectively in voting-concerned activities is providing materials in the language of the affected language minority group that are "clear, complete and accurate," 28 C.F.R. 55.19(b). Where even portions of the translations are unclear, misleading, incorrect, or incomplete, those who are relying on the translations will not be able to participate effectively in the process. Our examination of the proposed Spanish language materials reveals that some portions of the Spanish language translations are inconsistent with the English version, that there are numerous instances of misspelled Spanish words, and that there are instances of poor or incorrect Spanish word choice.

Because of these errors, those relying on the translations are at higher risk for misunderstanding the instructions and/or the forms than are those relying on the English versions. As a result, persons relying on the proposed Spanish language translations have an increased likelihood of having their registration forms rejected. In an effort to aid the Secretary of State's Office in identifying some of the more problematic aspects of the Spanish language translations, we have compiled the following list of problem areas. It should be noted, however, that this list is not inclusive of all of the problems we have identified:

With regard to the use of an agent, the English version specifically limits eligible agents to six specific family members, while the Spanish translation indicates that these six specific family members are examples of persons who are eligible to serve as agents;

Although both the English and Spanish instructions specify that the agent's relationship to the applicant is to be noted next to the agent's signature, only the English version repeats this instruction on the actual registration card;

On the registration card, the English asks for the city and county of the former residence, while the Spanish asks for the street address and county of the former residence;

Persons relying on the English version are asked to either print in ink or type, while those relying on the Spanish version are asked to write in ink or type; and

The instructions in English direct persons who have changed names to provide the former name. In Spanish they are instructed to use the former name.

Our investigation reveals that rejection of registration applications is particularly likely with regard to the translations pertaining to registration by agent. Because the Spanish language translation is misleading with regard to the identification of appropriate agents, those relying on it may select an ineligible agent. Because the Spanish version of the registration card provides no specific instruction below the space in which an agent is to designate his/her relationship to the applicant, those relying on it may omit the designation of the relationship of the agent from the form. Applications filled out by an ineligible agent or that do not designate the agent's relationship to the applicant will be rejected. Moreover, because there is a criminal penalty for false registration through an agent, applicants and/or agents relying on the Spanish language translations potentially could find themselves defending their attempt to register in a criminal action.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. See Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.52). In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that your burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the bilingual procedures

to be used as part of the state's NVRA implementation.

We note under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed change has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color or membership in a language minority group. In addition, you may request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the bilingual procedures for the implementation of the National Voter Registration Act of 1993 continue to be legally unenforceable. Clark v. Roemer, 500 U.S. 646 (1991); 28 C.F.R. 51.10 and 51.45.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the action the State of Texas plans to take concerning this matter. If you have any questions, you should call Ms. Colleen Kane (202-514-6336), an attorney in the Voting Section.

Sincerely,

Deval L. Patrick
Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

MAR 0 2 1995

Ms. Sally Tamez-Salas
Assistant Secretary
Board of Directors
P.O. Box 15830
San Antonio, Texas 78212-9030

Dear Ms. Tamez-Salas:

This refers to the temporary use of punch card ballots and the procedures relating thereto, and the joint agreement between the Edwards Underground Water District and Bexar County for the conduct of the November 8, 1994, election of the board of directors of the Edwards Underground Water District in Bexar, Hays and Comal Counties, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. On February 15, 1995, we received your response to our November 22, 1994, letter in which we precleared the November 8, 1994, election procedures for Hays and Comal Counties and requested additional information on the November 8, 1994, election procedures for Bexar County.

We have carefully considered the information you have provided, as well as information and comments from other interested persons. According to the 1990 Census, the Edwards Underground Water District has a total population of 1,261,098 persons, of whom 48.7 percent are Hispanic. The Hispanic share of the voting age population of the water district is 44.5 percent. Almost 94 percent of the population in the water district is located in Bexar County. Hispanic persons represent 49.7 percent of the total and 45.6 percent of the voting age population in Bexar County. Black persons represent 6.9 percent of the total and 6.8 percent of the voting age population in Bexar County.

Single-member districts recently were adopted by consent decree to settle a federal court challenge to the existing water district election system on one-person, one-vote grounds under the Fourteenth Amendment and minority vote dilution grounds under Section 2. Williams v. Edwards Underground Water District, C.A. No. SA92- CA0144, (W.D. Texas). Under the settlement plan, the water district will be governed by a twelve-member board of directors elected from single-member districts. Six of the members will be elected from Bexar County, four of whom will be elected from districts that are majority minority in voting age population. The parties also agreed to change the date of the

water district's elections from the third Saturday in January of odd-numbered years to the second Tuesday in November of even-numbered years. Finally, the parties agreed to an implementation schedule that, in part, required 1994 elections in two of Bexar County's majority minority districts (Districts 3 and 5).

About two months after the Williams suit was settled, the Edwards board entered into negotiations to have Bexar County conduct the November elections in Edwards Districts 3 and 5. Our investigation has revealed that during these negotiations, representatives of the Edwards board impressed upon the county the need to have the Edwards election on the same ballot as the general election in order to comply with the consent decree's intent to increase voter turnout. Despite the availability of a variety of alternative approaches for placing the Edwards election on the general election ballot, the county chose to hold the Edwards election on a separate ballot and the Edwards board contracted for the county to do so.

To allay concerns about the adverse impact the dual ballots would have on voter turnout in the Edwards election, the county represented that it would implement an extensive training program to ensure that poll officials were prepared to handle both elections and that it would provide publicity, signs, and assistance to ensure that voters would be aware of the Edwards election. However, our investigation reveals that the county does not appear to have taken even the most basic steps to prevent confusion among the poll officials and ensure voter participation in the Edwards election. For example, we have received numerous reports that the county provided little publicity regarding the Edwards election prior to the election, provided virtually no signs or assistance in the polling places to direct voters to the Edwards election, and apparently provided information at training sessions concerning the procedures for the Edwards election that led some poll officials to understand that they were to offer voters Edwards ballots only if voters specifically asked for these ballots.

Neither the Edwards board, nor the county, has shown that the decision to place the Edwards election on the general election ballot and/or the county's apparent failure to fully and clearly implement an extensive training program for poll officials and provide publicity, signs, and assistance for voters did not contribute to the significant difference between the voter participation levels in the Edwards and general elections and the apparent inability of voters to participate in the political process in two districts (Districts 3 and 5) that were created specifically to provide minority voters with an equal opportunity to elect candidates of choice.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has

neither a discriminatory purpose nor a discriminatory effect. Georgia v. United States, 411 U.S. 526 (1973); Procedures for the Administration of Section 5, 28 C.F.R. 51.52. The existence of some legitimate, nondiscriminatory reasons for the voting change does not satisfy this burden. See Village of Arlington Heights v. Metropolitan Housing Development Corp., 429 U.S. 252, 265-66 (1977); City of Rome v. United States, 446 U.S. 156, 172 (1980); Busbee v. Smith, 549 F. Supp. 494, 516-17 (D.D.C. 1982), aff'd, 459 U.S. 1166 (1983). Our review leads us to conclude that holding a timely general election did not necessarily require severing the Edwards election from the general ballot, and that once the decision to do so was made, that the failure to fully and clearly train poll officials and educate and assist voters further exacerbated the adverse impact of holding the Edwards election on a separate ballot. Nor can we say that the Edwards board or the county has met their burden of showing that, in these circumstances, temporary use of punch card ballots and the procedures relating thereto will not "lead to a retrogression in the position of . . . minorities with respect to their effective exercise of the electoral franchise." Beer v. United States, 425 U.S. 130, 141 (1976).

In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that your burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the temporary use of punch card ballots and the procedures relating thereto.

We note that under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed change has neither a discriminatory purpose nor effect. 28 C.F.R. 51.44. In addition, you may request that the Attorney General reconsider

the objection. See 28 C.F.R. 51.45. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the temporary use of punch card ballots and the procedures relating thereto continue to be legally unenforceable. See Clark v. Roemer, 111 S. Ct. 2096 (1991); 28 C.F.R. 51.10.

The joint agreement between the Edwards Underground Water District and Bexar County for the conduct of the November 8, 1994, election is directly related to the temporary use of punch card ballots and the procedures related thereto. Accordingly, the Attorney General will make no final determination at this time with regard to this related change. 28 C.F.R. 51.22(b).

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action that the Edwards board plans to take concerning this matter. If you have any questions, you should call Colleen M. Kane, an attorney in the Voting Section (202-514-6336).

Sincerely,

DeVal L. Patrick
Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

June 26, 1995

J. Gerald Hebert, Esq.
800 Parkway Terrace
Alexandria, Virginia 22302

Dear Mr. Hebert:

This refers to the change in method of election from at-large by majority vote with numbered posts, staggered terms, and a 2-2-1 method of staggering to cumulative voting by plurality vote with numbered posts, staggered terms, and a 3-2 method of staggering, a change in procedures for filling vacancies on the city council, a change in terms of office for the mayor and councilmembers from three-year terms to two-year terms, and the implementation schedule for the City of Andrews in Andrews County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your partial response to our request for additional information on April 27, 1995.

Over the past decade, the city's Hispanic population percentage has increased by about ten percentage points. According to the 1990 Census, Hispanic persons represent 34 percent of the city's total and 28 percent of the city's voting age populations. Under the proposed system, every two years either two or three posts for the city council will be up for election. Candidates must designate the specific post for which they seek election. Voters will be able to cast as many ballots as there are positions, and they may apportion their votes across the posts. Thus, when three posts are up for election, a voter has three votes to apportion. The voter may cast all three votes in a particular post, two votes in one post and one vote in another, or one vote in each post. Because the city eliminated the majority vote requirement, whichever candidate obtains the most votes in a particular post wins. The city does not provide for any kind of voter education or outreach program to help the minority community understand how to use the proposed system effectively.

We have considered carefully the information you have provided. Your initial submission contained virtually none of the information required and explicitly described in our published administrative guidelines for submissions of districting plans and changes in electoral systems. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.52 through 51.60). As a result, we made a timely written request for additional information with regard to this submission on August 5, 1994. 28 C.F.R. 51.37. After our initial request for additional information, we met with the city's attorneys on two separate occasions to discuss the reasons for our request and our concerns about the proposed system.

We explained that the use of staggered terms and numbered posts and the absence of a voter education program appear to unnecessarily dilute the ability of minority voters to elect a candidate of choice. Staggered terms limit the number of positions that are up for election at any one time, and therefore, minority voters must register and turn out to vote in higher proportions to elect their candidate of choice than they would when more positions are up for election. Likewise, without numbered posts, the top two or three candidates overall would be elected. With numbered posts, if the minority community's candidate of choice were to place second or third overall but lose in the particular post, that candidate would not be elected.

On February 9, 1995, we reiterated our original request for additional information. Finally, on April 27, 1995, in a meeting with the mayor and the city's attorneys, we received the city's response to the request made the previous August and were informed by the city's attorney that no other information would be provided. In neither the meeting nor in its written response, did the city provide any more than a cursory explanation of the reasons the proposed system was adopted. The city also has failed to provide any explanation for its rejection of a single-member districting plan containing a majority Hispanic district which was available to the city during its deliberative process.

Nor has the city provided any detailed explanation of the reasons why staggered terms and numbered posts were included as part of the proposed system. In fact, the city's brief justifications for staggered terms and numbered posts appear pretextual. The city claims that staggered terms are necessary to maintain continuity on the council, but the likelihood of all of the council's incumbents being defeated if concurrent terms were used appears to be very small considering that on average each incumbent is re-elected at least once. Nor is the city's claim that numbered posts are required by law credible. State law does not require cities to use numbered posts, and as a home rule city, Andrews apparently has the authority to alter its election system by its own action. Thus, just as it eliminated

the majority vote requirement for councilmembers, the council could have eliminated numbered posts and staggered terms.

The city's rationale for omitting this information from its response is that it is subject to the attorney-client privilege because the deliberations concerning the method of election were part of executive sessions called to discuss the settlement of the voting rights lawsuit that had been brought against the city, League of United Latin American Citizens, District 5 v. City of Andrews, et al., No. MO 93 CA 075 (W.D. Tex. 1993). Because there are no public records or members of the community who were involved in the process, the city and its attorney are the only persons who have access to such information. However, under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. See Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.27, 51.40, and 51.52).

In the absence of any other explanation by the city, a reasonable inference that can be drawn from the information presented to us is that the proposed system was adopted to protect incumbents or otherwise to minimize minority voting strength. For example, the single-member district plan presented to the council during the process paired several incumbents in the same district. Conversely, the proposed system does not require any of the incumbents to run against another; each incumbent may run for an individual post without any competition from a fellow incumbent.

Thus, based on the information available to us, the proposed system not only unnecessarily dilutes the ability of minority voters to elect a candidate of choice, but it also appears to be designed to protect incumbents. While incumbency is not in and of itself an inappropriate consideration, it may not be accomplished at the expense of minority voting potential. See, e.g., Garza v. County of Los Angeles, 918 F.2d 763, 771 (9th Cir. 1990), cert. denied, 111 S.Ct. 681 (1991); Ketchem v. Byrne, 740 F.2d 1398, 1408-9 (7th Cir. 1984), cert. denied, 471 U.S. 1135 (1985). Where, as here, the protection afforded incumbents is provided at the expense of minority voters, the city bears a

heavy burden of demonstrating that its choices are based on legitimate, non-racial considerations that are not tainted, even in part, by an invidious racial purpose. See Village of Arlington Heights v. Metropolitan Housing Development Corp., 429 U.S. 252, 265-66 (1977); City of Rome v. United States, 446 U.S. 156, 172 (1980); Busbee v. Smith, 549 F. Supp. 494, 516-17 (D.D.C. 1982), aff'd, 459 U.S. 1166 (1983); Washington v. Davis, 426 U.S. 229, 242 (1976).

Moreover, we note that the proposed method of election also clearly violates Section 2 of the Voting Rights Act. The city's minority population suffers from a history of discrimination which appears to have resulted in depressed income, education, and registration levels. The electoral history of the city and within the county suggests that voting is polarized along racial and ethnic lines to such a degree that no person of Hispanic heritage has ever served as a councilmember. Moreover, the only Hispanic member of the school board ever to win election was recently defeated in an election in which cumulative voting with staggered terms was employed.

In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that your burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the proposed change in the method of election from at-large by majority vote with numbered posts, staggered terms, and a 2-2-1 method of staggering to cumulative voting by plurality vote with numbered posts, staggered terms, and a 3-2 method of staggering.

We note under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed system has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. In addition, you may request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the change in the method of election continues to be legally unenforceable. Clark v. Roemer, 500 U.S. 646 (1991); 28 C.F.R. 51.10 and 51.45.

The Attorney General will make no determination at this time with regard to the change in the terms of office as they are directly related to the proposed change in the method of election for the city council. See 28 C.F.R. 51.22 (b).

The Attorney General does not interpose any objection to the change in the method of filling vacancies. However, we note that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin

the enforcement of the this change. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41).

Your April 27, 1995, letter withdraws the implementation schedule from Section 5 review. Accordingly, no determination by the Attorney General is required concerning this matter. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.25 (a)).

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the action the City of Andrews plans to take concerning this matter. If you have any questions, you should call Ms. Colleen Kane (202-514-6336), an attorney in the Voting Section. Refer to File No. 94-2271 in any response to this letter so that your correspondence will be channeled properly.

Since the Section 5 status of the method of election has been placed at issue in League of United Latin American Citizens, District 5 v. City of Andrews, et al., No. MO 93 CA 075 (W.D. Tex. 1993), we are providing a copy of this letter to the court and counsel of record in that case.

Sincerely,

Loretta King
Acting Assistant Attorney General
Civil Rights Division

cc: The Honorable Lucius D. Bunton III
United States District Court

Rolando L. Rios, Esq.
Kevin B. Jackson, Esq.

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

January 16, 1996

The Honorable Antonio Garza
Secretary of State
State of Texas
Elections Division
P.O. Box 12060
Austin, Texas 78711-2060

Dear Mr. Secretary:

This refers to Chapter 797 (1995), insofar as it authorizes agency employees to make determinations of an individual's eligibility to register based on citizenship information contained in the agency's file; eliminates the requirement that agency employees must request the completion of a declination form each and every time an individual is offered registration and refuses; authorizes cancellation of registration immediately upon a voter's written indication of residence outside the county; authorizes cancellation of registration on the November 30th following the second general election for state and county officers rather than on the November 30th following the second general election for federal officers; and relocates voter registration assistance requirements as part of the implementation of the National Voter Registration Act of 1993 ("NVRA"), 42 U.S.C. 1973gg to 1973gg-10, for the State of Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your response to our request for additional information on November 14, 1995.

With regard to the authorization to cancel registration immediately upon a voter's written indication of residence outside the county; the authorization to cancel registration on the November 30th following the second general election for state and county officers rather than on the November 30th following the second general election for federal officers; and the relocation of voter registration assistance requirements, the Attorney General does not interpose any objection. However, we note that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the these changes. See Procedures for the Administration of Section 5 (28 C.F.R. 51.41).

With regard to the provision which allows agency employees to make determinations of an individual's eligibility to register based on citizenship information contained in the agency's file, we have reviewed the information provided by the State, as well as information from the 1990 Census and other sources, including the Immigration and Naturalization Service. According to the 1990 Census, minority persons represent 34 percent of the State's total population (14,229,191) and 30 percent of its voting age population (9,923,085). Hispanic persons comprise the largest minority group (21 percent of the total population). Data from the INS indicate that nearly 70,000 applications for citizenship are currently pending in Texas and that between fiscal years 1993 and 1994, over 51,000 Texas residents became citizens. Two-thirds of those who became citizens in 1993 and 1994 were of Hispanic or Asian ancestry.

We do not take the position that persons who are clearly not citizens should be registered to vote or even encouraged to register. However, with the rapid rate at which minority persons are becoming citizens, there is a strong likelihood that some of the citizenship information contained in agency files may be outdated or incorrect. We are concerned that persons who have become citizens since they last filled out forms at a particular agency will not be offered registration. There are no provisions or safeguards in the legislation to deal with situations in which the citizenship information in the file is outdated or wrong. Because the law makes no provisions for informing potential registrants that the reason they were not offered registration is that their file indicates non-citizen status, there is no opportunity for potential registrants to provide any relevant or updated information. Moreover, there are no mechanisms to explain to potential registrants who ask to register and are refused that the reason for the refusal is because of information in the file indicating non-citizen status.

Because minority persons represent the majority of persons attaining citizenship in Texas and the information contained in agency files is unlikely to keep pace with their citizenship rate, allowing agency employees to make eligibility determinations based on citizenship information contained in those files is likely to have a retrogressive effect on minority persons. Beer v. United States, 425 U.S. 130, 141 (1976); 28 C.F.R. 51.54. As a result, I cannot conclude, as I must under the Voting Rights Act, that your burden under Section 5 has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to Chapter 797 insofar as it authorizes agency employees to make determinations of an individual's eligibility to register based on citizenship information contained in the agency's file.

We note under Section 5 you have the right to seek a declaratory judgment from the United States District Court for

the District of Columbia that the proposed change has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. In addition, you may request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the change in the method of election continues to be legally unenforceable. Clark v. Roemer, 500 U.S. 646 (1991); 28 C.F.R. 51.10 and 51.45.

With regard to the elimination of the requirement that agency employees must request the completion of a declination form each and every time an individual is offered registration and refuses, we have been informed that the Secretary of State's Office will promulgate rules to implement the procedures that will be used to document offers of registration and record declinations and will provide a training program, including a detailed memorandum and a video tape, pertaining to these procedures. When these procedures and training program are finalized, they should be submitted to the United States District Court for the District of Columbia for judicial review or to the Attorney General for administrative review as required by Section 5 of the Voting Rights Act. It is necessary that these changes either be brought before the District Court for the District of Columbia or submitted to the Attorney General for a determination that they do not have the purpose and will not have the effect of discriminating on account of race, color, or membership in a language minority group. Changes which affect voting are legally unenforceable unless Section 5 preclearance has been obtained. Clark v. Roemer, 500 U.S. 646 (1991); Procedures for the Administration of Section 5 (28 C.F.R. 51.10).

Because the elimination of the requirement that agency employees must request the completion of a declination form each and every time an individual is offered registration and refuses and the implementation procedures to be utilized by the Secretary of State are directly related, they must be reviewed simultaneously. Accordingly, it would be inappropriate for the Attorney General to make a preclearance determination on the instant change until the related changes have been submitted for Section 5 review. See 28 C.F.R. 51.22(b) and 51.35.

Should you elect to make a submission to the Attorney General for administrative review rather than seek a declaratory judgment from the District Court for the District of Columbia, it should be made in accordance with Subparts B and C of the procedural guidelines. At that time we will review all changes simultaneously; however, any documentation previously provided need not be resubmitted.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the State of Texas plans to take concerning these matters. If you have any questions, you should call Colleen M. Kane (202-514-6336) of our staff. Refer to File Nos. 95-2017 and 96-0054 in any response to this letter so that your correspondence will be channeled properly.

Sincerely,

Deval L. Patrick
Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

February 18, 1997

The Honorable Antonio O. Garza, Jr.
Secretary of State
State of Texas
Elections Division
P.O. Box 12060
Austin, Texas 78711-2060

Dear Mr. Secretary:

This refers to your request that the Attorney General reconsider and withdraw the January 16, 1996, objection interposed under Section 5 of the Voting Rights Act, 42 U.S.C. 1973c, to Chapter 797 (1995), insofar as it authorizes agency employees to make determinations of an individual's eligibility to register based on citizenship information contained in agency files as part of the implementation of the National Voter Registration Act of 1993 ("NVRA"), 42 U.S.C. 1973gg to 1973gg-10, for the State of Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your request on December 19, 1996; supplemental information was received on January 22, 1997.

This also refers to the administrative rule promulgated by the Texas Secretary of State at 1 Tex. Admin. Code, Section 81.402, which authorizes employees of agencies where clients are required to update citizenship status at each renewal of service, change of address, or other contact with the agency to make determinations of an individual's eligibility to register, as part of the implementation of the National Voter Registration Act of 1993 ("NVRA"), 42 U.S.C. 1973gg to 1973gg-10, for the State of Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your submission on December 19, 1996; supplemental information was received on January 22, 1997.

With regard to the proposed administrative rule, we understand based on the supplemental information your office provided on January 22, 1997, which was confirmed in a telephone conversation on February 14, 1997, between Ms. Colleen Kane-Dabu of our staff and Mr. Clark Kent Ervin of your office, that the administrative rule has not been finally adopted and that the earliest date that it can become final is February 21, 1997. A proposed change which is not finally enacted or capable of administration is not ripe for review by the Attorney General (with certain limited exceptions not applicable here). Accordingly, it would be inappropriate for the Attorney General to make a determination concerning your submission now. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.22(a) and 51.35). When this change is formally adopted, preclearance under Section 5 should be sought.

With regard to your request that the Attorney General reconsider the January 16, 1996, objection, the state has provided no new relevant information or legal argument in support of its request; as noted above, the proposed administrative rule, which appears to form the basis for the state's request, is not final and cannot be considered under Section 5 at this time. See 28 C.F.R. 51.45. Therefore, I remain unable to conclude, as I must under the Voting Rights Act, that the State of Texas has carried its burden of showing that the submitted change will not have a discriminatory effect. See Beer v. United States, 425 U.S. 130, 141 (1976); Georgia v. United States, 411 U.S. 526 (1973); see also 28 C.F.R. 51.48 and 51.52. Accordingly, on behalf of the Attorney General, I must decline to withdraw the objection to Chapter 797 (1995), insofar as it authorizes agency employees to make determinations of an individual's eligibility to register based on citizenship information contained in agency files.

As we previously advised, you may seek a declaratory judgment from the United States District Court for the District of Columbia that Chapter 797, insofar as it authorizes agency employees to make determinations of an individual's eligibility to register based on citizenship information contained in the agency's file, has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. We remind you that until such a judgment is rendered by that court, the objection by the Attorney General remains in effect and the proposed change continues to be legally unenforceable. See Clark v. Roemer, 500 U.S. 646 (1991); 28 C.F.R. 51.10.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the State of Texas plans to take concerning these matters. If you have any questions, you should call Colleen Kane-Dabu (213-894-2931) of our staff. Refer to File Nos. 95-2017 and 96-4548 in any response to this letter so that your correspondence will be channeled properly.

Sincerely,

Isabelle Katz Pinzler
Acting Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

March 17, 1997

Randall B. Strong, Esq.
503 Ward Road
Baytown, Texas 77520

Dear Mr. Strong:

This refers to two annexations (Ordinance Nos. 95-13 and 95-33) to the City of Webster in Harris County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your response to our May 3, 1996, request for additional information on January 15 and March 11, 1997; supplemental information was received on March 5, 1997.

The Attorney General does not interpose any objection to the commercial annexation that was the subject of Ordinance No. 95-13. However, we note that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the change. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41).

With respect to the annexation contained in Ordinance No. 95-33, however, we cannot reach the same conclusion. We have considered carefully the information you have provided, as well as Census data, and comments and information from other interested parties. According to the 1990 Census, Hispanic residents constitute 19 percent and black residents constitute 5 percent of the city's total population, and 17 and 4 percent, respectively, of the voting age population. The annexation in Ordinance No. 95-33 adds approximately 1,162 persons to the city's total population, all of whom appear to be white. Thus, the proposed annexation will reduce the city's Hispanic proportion to 15.0 percent and the black proportion to 4.2 percent of the total population.

Our analysis indicates that there is a residential area adjacent to the city limits that if annexed, would have lessened the impact of annexing the all-white area included in Ordinance No. 95-33. This area is to the northeast of the city and is located within Census Block 101B of Tract 037304. This block has a significant minority population percentage: Hispanic persons constitute 39 percent and black residents constitute 7 percent of the total population. According to information provided by the city, the annexation of Block 101B alone would have increased the city's Hispanic population to 20.2 percent and the black population to 5.3 percent of the total.

The city has offered several reasons for its refusal to annex Block 101B. First, it alleges that it was unaware that Block 101B had a significant minority population at the time it was considering its 1995 annexations and that its racial/ethnic composition did not play a role in the city's annexation decisions. Our analysis, however, revealed that during the annexation process, the Hispanic councilmember and another leader of the Hispanic community opposed the annexation contained in Ordinance No. 95-33 indicating that if the city was going to annex the all-white residential property in Ordinance No. 95-33, it should also annex the residential property contained in Block 101B. They requested city officials at a planning and zoning meeting and at council meetings to consider annexing Block 101B, but their requests were refused.

Although there is some dispute regarding whether the city manager, who is central in deciding which areas will be considered for annexation into the city, actually stated that the reason Block 101B would not be annexed was because of its ethnic composition, conversations between the city manager and at least two city councilmembers tend to corroborate that this was indeed the city manager's view. Given the role of the city manager in the city's annexation process, and the concerns expressed to city officials by representatives of the minority community regarding the city's failure to include Block 101B in the annexation, the city's assertions that it was unaware of the racial/ethnic make-up of Block 101B at the time of the 1995 annexation is at best disingenuous.

Second, the city argues that Block 101B could not be annexed because it is in a track of land that straddles the extraterritorial jurisdiction ("ETJ") of the city. Our analysis revealed that Block 101B is clearly within the city's ETJ line and that the city's failure to annex the area could not be explained satisfactorily on this basis.

Third, the city claims that the population from Block 101B would place a strain on city services that would be too great for the city to absorb, and that unlike the area annexed by Ordinance No. 95-33, Block 101B would not generate enough revenue to cover the cost of extending services thereto. The city maintains that an important consideration in determining whether to annex a particular parcel of land is the city's assessment that the revenues generated from the area will offset the cost of providing municipal services to it. With regard to Ordinance No. 95-33 and Block 101B, however, no specific data or precise information regarding anticipated revenues or costs for municipal services was provided by the city in support of its position. Information we obtained from city officials and municipal records indicates that the cost of providing services to Block 101B would not be any more, and might even be less, than the cost of providing services to the area annexed by Ordinance No. 95-33.

Fourth, the city also alleges that annexing the area included in Ordinance No. 95-33 would serve to clarify the city's northern boundaries between it and the City of Houston by creating an easily distinguishable boundary. Information contained in city documents and provided by city officials clearly indicates that annexing Block 101B would have enabled the city to use a major thoroughfare, El Camino Real, as a continuous, and easily distinguishable boundary line for the northeastern part of the city. The failure to include Block 101B leaves the city with an irregular boundary in the north.

Finally, the city suggests that the area contained in Ordinance Nos. 95-13 and 95-33 were more desirable than Block 101B because of their profitability. Although our investigation indicates that it is likely that the area annexed by Ordinance No. 95-33 will generate more revenue than Block 101B, no information has been presented by the city to suggest that annexing Block 101B would create a deficit in the city's budget because Block 101B has an insufficient tax base to cover the cost of the additional services it will need. Moreover, even though it appears that the area annexed by Ordinance No. 95-33 has the ability and/or the potential to provide the city with greater revenues than Block 101B, the fact that the other area the city annexed in 1995 is vacant and will generate no revenue unless and until it is developed suggests that generating revenue could not have been the city's only motivation in deciding not to annex Block 101B. In fact, as stated above, with regard to the annexation of areas other than Block 101B, the city seems most concerned that the revenues generated by the property simply offset the cost of providing municipal services to it.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. See Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.52). To demonstrate the absence of a discriminatory purpose with respect to an annexation, a jurisdiction must demonstrate that the revision of municipal boundary lines to "includ[e] certain voters within the city [while] leaving others outside," was not based, even in part, on race. Perkins v. Matthews, 400 U.S. 379, 388 (1971). See also City of Pleasant Grove v. United States, 479 U.S. 462 (1987).

The following facts weigh heavily here in our assessment regarding whether the city's burden has been met: (1) the city failed to annex an area with a significant minority population, while it was simultaneously annexing an all-white area that when added to the city's population will reduce the minority proportion; (2) the city deviated from what appears to be its primary annexation consideration in deciding not to annex Block 101B (i.e., that the cost of providing municipal services not be outweighed by the revenues anticipated from the annexation); (3) the city failed to achieve its purported objective of establishing an easily distinguishable boundary in the north in undertaking the annexation in Ordinance No. 95-33. This objective would have been more fully realized, however, had Block 101B been annexed; and (4) the city in the decision-making process appears to have been apprised by representatives of the minority community of their concerns about excluding from the city the population that resides in Block 101B, but, contrary to these concerns, voted in favor of annexing only the all-white area included in Ordinance No. 95-33.

Additionally, the information available to us suggests that the city's agent in determining which areas were eligible for annexation consideration refused to consider Block 101B for annexation because of the racial/ethnic background of the persons who reside in the area. Thus, significant questions persist regarding a lack of even-handedness in the city's application of its annexation policy and the city's annexation choices appear to have been tainted, if only in part, by an invidious racial purpose. See Village of Arlington Heights v. Metropolitan Housing Development Corp., 429 U.S. 252, 265-66 (1977); Busbee v. Smith, 549 F. Supp. 494, 516-17 (D.D.C. 1982), aff'd, 459 U.S. 1166 (1983); City of Rome v. United States, 446 U.S. 156, 172 (1980). An annexation or any other voting change adopted for racial reasons, however, can have no legal effect under Section 5. City of Richmond v. United States, 422 U.S. at 378.

In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that your burden under Section 5 has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the annexation contained in Ordinance No. 95-33. We note under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed change has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. In addition, you may request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the objection by the Attorney General remains in effect and the annexation continues to be legally unenforceable. Clark v. Roemer, 500 U.S. 646 (1991); 28 C.F.R. 51.10, 51.11, 51.45, and 51.48(c) and (d).

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the City of Webster plans to take concerning these matters. If you have any questions, you should call Colleen Kane-Dabu (213-894-2931) of our staff. Refer to File No. 96-1006 in any response to this letter so that your correspondence will be channeled properly.

Sincerely,

Isabelle Katz Pinzler
Acting Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

APR 7 1998

Randall B. Strong, Esq.
City Attorney
503 Ward Road
Baytown, Texas 77520

Dear Mr. Strong:

This refers to a 1997 annexation (Ordinance No. 97-15) to the City of Webster in Harris County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your submission of this annexation on February 6, 1998.

This also refers to your request that the Attorney General reconsider and withdraw the March 17, 1997, objection interposed under Section 5 of the Voting Rights Act, 42 U.S.C. 1973c, to a 1995 annexation (Ordinance No. 95-33) to the City of Webster. We received your request on February 6, 1998.

With regard to the annexation adopted pursuant to Ordinance No. 97-15, the Attorney General does not interpose any objection. However, we note that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the change. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41).

We understand that the annexation precleared above is located within Census Block 101B of Tract 037304. We note that the city's failure to annex this area formed the basis for our conclusion during our review of the annexation adopted pursuant to Ordinance 95-33 that the city had failed to establish that its annexation policy was racially nondiscriminatory. The annexation of the area within Census Block 101B now resolves our prior concerns.

Accordingly, pursuant to Section 51.48(b) of the Procedures for the Administration of Section 5 (28 C.F.R.), the objection interposed to the 1995 annexation (Ordinance 95-33) is hereby withdrawn. However, we note that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the change. See 28 C.F.R. 51.41.

Sincerely,

Bill Lann Lee
Acting Assistant Attorney General
Civil Rights Division

U. S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

September 29, 1998

The Honorable Alberto R. Gonzales
Secretary of State
Elections Division
P.O. Box 12060
Austin, Texas 78711-2060

Dear Mr. Secretary:

This refers to the change in the procedures for filling certain vacancies in judicial offices from election to appointment in the State of Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your response to our June 1, 1998, request for additional information on July 31, 1998. Supplemental information was received on August 3 and 27, 1998.

We have carefully considered the information you have provided, as well as Census data, and information and comments from other interested persons. The state has explained that the change in filling prospective judicial vacancies occurs as a result of the state supreme court's interpretation of Texas' constitution in State of Texas ex rel. Angelini v. Hardberger, 932 S.W.2d 489 (Texas 1996). The state has indicated that it interprets the Hardberger decision to apply only to vacancies in judicial offices. Our review of the Hardberger decision under Section 5 is limited solely to that aspect of the opinion that relates to voting. See Allen v. State Board of Elections, 393 U.S. 544 (1969); Procedures for the Administration of Section 5, 28 C.F.R. 51.13. Specifically, we reviewed the proposed change from election to appointment in the procedure for filling vacancies that results from the prospective resignation of a judge. As we understand it, rather than directly electing a judge to fill a vacancy at the election that occurs between the time the resigning judge tenders his/her resignation but before he/she actually steps down, under the new procedure an interim appointment will be made by the governor, and the appointed judge will serve until the next succeeding general election.

According to the 1990 Census, the State of Texas has a total population of 16,986,510 persons, of whom 25.6 percent are Hispanic and 11.6 percent are black. The Hispanic share of the

voting age population is 22.4 percent and the black share of the voting age population is 11.0 percent. The state has fourteen court of appeals districts, three (4th, 8th, and 13th) of which have majority Hispanic population percentages (55, 56, and 63 percent Hispanic, respectively). There are no majority black court of appeals districts. Sixty eight of the state's 396 district courts are majority minority districts; of these, thirty-seven district courts have majority Hispanic voting age population percentages, but none have majority black voting age population percentages.

Our analysis indicates that under the proposed change, it is unlikely that judicial vacancies in districts with significant Hispanic voting age and/or registered voter populations will be filled in a manner that reflects the preferences of Hispanic voters commensurate with the opportunity available to those voters if the vacancy was filled by election. The governor is elected at large, by a statewide electorate in which Hispanic voters are a minority. Because the governor's constituency is substantially different than that in districts with significant Hispanic population percentages and because voting in Texas often is polarized along racial lines, voters in these districts will not have an opportunity to participate in the selection of judges under the new system similar to the opportunity they have under the current system. Moreover, there does not appear to be any mechanism or safeguard built into the judicial appointment process to allow for input from Hispanic voters, or a consistent procedure for soliciting the minority community's views with regard to potential judicial candidates.

The judicial appointment made to the fourth court of appeals district pursuant to the Hardberger decision fully demonstrates the impact of the proposed procedure on Hispanic participation opportunities. Instead of seeking input from Hispanic voters with regard to potential judicial appointees, the governor selected an Anglo appointee who had been rejected by the majority of the voters in that district in an earlier election in favor of a Hispanic candidate. Had the vacancy been filled by election, rather than by gubernatorial appointment, Hispanic voters in the fourth court of appeals district would have had an opportunity to elect a candidate of choice rather than having a judge for the past two years appointed to that seat who was not their choice. Thus, the Angelini appointment is illustrative of the effect the proposed change may have on the participation opportunities of Hispanic voters.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. Georgia v. United States, 411 U.S. 526 (1973); Procedures for the

Administration of Section 5, 28 C.F.R. 51.52. We recognize that the state supreme court, faced with the constitutional issues raised in the Hardberger litigation, was required to render a decision regarding the proper interpretation of state law. The state, however, has not suggested that it was prevented by the court ruling in the Hardberger litigation from providing Hispanic voters in the fourth court of appeals district meaningful input into the appointment process, which might well offset the diminution in electoral opportunity resulting from the change in vacancy filling procedure. Thus, while the state has met its burden with regard to purpose, we cannot say that the state has met its burden of showing that, in these circumstances, the change in vacancy filling procedure from election to appointment will not "lead to a retrogression in the position of . . . minorities with respect to their effective exercise of the electoral franchise." Beer v. United States, 425 U.S. 130, 141 (1976).

In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that your burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the change in the procedure for filling prospective judicial vacancies.

We note that under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed change has neither a discriminatory purpose not effect. 28 C.F.R. 51.44. In addition, you may request that the Attorney General reconsider the objection. See 28 C.F.R. 51.45. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the procedure for filling prospective judicial vacancies by gubernatorial appointment continues to be legally unenforceable. See Clark v. Roemer, 500 U.S. 646 (1991); 28 C.F.R. 51.10.

Finally, we note that the state may well be able to develop a procedure for filling prospective judicial vacancies that would satisfy the requirements of both the state constitution and the Voting Rights Act. In this regard, the objection we interpose today does not mean that the Voting Rights Act precludes the state from adopting a procedure for filling prospective judicial vacancies by gubernatorial appointment; our decision does mean, however, that in order to satisfy the Section 5 non-retrogression principle, any appointment procedure that is used must provide minority participation opportunities. Should the state decide to adopt a new procedure and to seek administrative review under Section 5, our staff stands ready to respond on an expedited basis.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action that the State of Texas plans to take concerning this matter. If you have any questions, you should call Zita Johnson-Betts, a Deputy Chief in the Voting Section (202-514-8690).

Sincerely,

Bill Lann Lee
Acting Assistant
Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

December 14, 1998

Barbara E. Roberts, Esq.
City Attorney
P.O. Box 779
Galveston, Texas 77553-0779

Dear Ms. Roberts:

This refers to amendments to the city charter that provide for a change in the method of election for the city council from six single-member districts to four single-member districts and two at large with numbered posts, a change from a plurality to a majority vote requirement, redistricting criteria and revised recall procedures for the City of Galveston in Galveston County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your response to our August 17, 1998, request for additional information on October 15, 1998.

The Attorney General does not interpose any objection to the specified recall procedures. However, we note that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the change. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41).

With regard to the remaining specified changes, we cannot come to the same conclusion. We have carefully considered the information you provided, as well as Census data, and information in our files and from other interested parties. According to 1990 Census data, the city's total population is 28 percent black and 21 percent Hispanic. Under the existing system, six councilmembers are elected from single-member districts and the mayor is elected at large. Two of the single-member districts have black population majorities and have elected black representatives to the city council. This method of election and districting plan were adopted in settlement of a vote dilution

lawsuit filed by minority residents against the city in Arceneaux v. City of Galveston, No. G-90-221 (S.D. Tex.), and received preclearance under Section 5 for use on an interim basis on April 29, 1993, and for use on a permanent basis on January 27, 1994.

Prior to the adoption of a single-member district method of election, the city sought preclearance for a method of election similar to the plan currently under review. It provided for the election of four councilmembers from single-member districts, two councilmembers elected at large by numbered position and the mayor elected at large with a plurality vote requirement. This 4-2-1 method of election was proposed as a replacement for the at-large method of election that was the subject of the vote dilution lawsuit. On December 14, 1992, the Attorney General precleared the use of a plurality vote requirement, but interposed an objection under Section 5 to the proposed 4-2-1 method of election and to the use of numbered posts for the at-large seats because the city had not met its burden under Section 5 of demonstrating the absence of a discriminatory purpose and effect. Our conclusion in this regard was premised upon a number of factors.

First, our analysis of the at-large system indicated that voting in municipal elections was racially polarized and that minority-supported candidates had very limited success under the at-large system. Second, the districting plan that accompanied the 4-2-1 method of election did not include a single district in which black or Hispanic voters constituted a majority of the population; instead, the plan included two districts in which black and Hispanic voters combined constituted a majority. The city failed, however, to provide evidence of cohesion between black and Hispanic voters in municipal elections, rendering it doubtful that either minority group under this plan would elect a candidate of choice to a council seat. Third, the city maintained its preference for the 4-2-1 plan over the opposition of the minority community and the Arceneaux plaintiffs, who favored the adoption of a six single-member district plan with two districts in which black voters would constitute a majority of the population. Fourth, the city chose to maintain two at-large positions on the city council, in addition to the mayoral seat, and to add numbered posts. Given the existence of racially polarized voting in municipal elections, we concluded that these features of the proposed electoral system would limit the ability of minority voters to elect their candidates of choice to the city council. Finally, given all of the circumstances described above, we determined that the city had not provided legitimate, nonracial justifications for its choices regarding the 4-2-1 method of election and its adoption of numbered posts. It is against this backdrop that we must view the city's current

request for preclearance of the 4-2-1 plan, with numbered posts, as well as the proposed return to the use of a majority vote requirement.

In light of the Attorney General's prior objection to virtually identical voting changes, and the requirement of Section 5 that the submitting authority carries the burden of demonstrating that proposed voting changes are free of discriminatory purpose and effect -- see 28 C.F.R. 51.52(a) -- we have examined the information provided to determine whether new factual or legal circumstances exist which would lead to the conclusion that voting changes that did not satisfy the nondiscrimination requirement of Section 5 in 1992 will satisfy the same requirement under Section 5 today. Central to our consideration of this issue is the presence today in the City of Galveston of a method of election which fairly reflects minority voting strength, a circumstance which did not exist when the 1992 objection was interposed.

Our examination of city election returns since 1991 indicates that racial bloc voting continues to play a significant role in city elections. This year's mayoral election in which the Hispanic candidate was successful appears to have been an instance where Hispanic and black voters did vote together, along with a number of Anglo crossover voters. However, this cohesion between minority voters appears to have been a departure from the norm, as evidenced by the results in other recent elections. Of particular note is the fact that the proposed majority vote requirement, had it been in effect in this year's election, could well have changed the outcome of the mayoral race since the majority of the votes cast were for candidates favored by the Anglo voting majority. We find it significant that the city has provided no information or analysis in support of the proposed changes regarding racial bloc voting or cohesiveness between black and Hispanic voters, factors which were critical in our 1992 examination of the 4-2-1 method of election and which are no less important today.

While the city council has not yet adopted a redistricting plan for the proposed method of election, we understand that three alternative plans were developed by an appointed redistricting committee and they are currently before the council. We understand that all three plans are based on 1990 Census data and that this data continues to be the most accurate available information on the city's demographics. As was the case in 1992, we are informed that none of these plans provide for a single-member district in which Hispanic persons constitute a majority of the population or more than one district in which black persons constitute a majority. If this information is correct, it would appear to confirm that the proposed method of election, under current circumstances, cannot produce an electoral system that recognizes minority voting strength as

fairly as does the current system. Therefore, the proposed 4-2-1 method of election with numbered posts for the two at-large seats and a majority vote requirement would lead to a retrogression in minority voting strength prohibited by Section 5. See Beer v. United States, 425 U.S. 130, 141 (1976)("the purpose of § 5 has always been to insure that no voting-procedure changes would be made that would lead to a retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise"); 28 C.F.R. 51.54.

We have considered the impact of the proposed redistricting criteria on the city's ability in the future to draw districts that fairly recognize minority voting strength. Our analysis has been hampered by the lack of information from the city regarding these criteria and how they are to be interpreted and applied. For reasons that the city does not explain, these criteria place what appear to be significant restrictions on the ability of the city to draw racially fair redistricting plans. The criteria specify that city districts be drawn from north to south and that districts "be as equal as possible with only minor variations depending upon the streets selected for district boundaries." The latter criterion appears to be significantly more exacting than the plus or minus 10 percent deviation standard approved by the federal courts for local jurisdictions to satisfy the one person, one vote requirement of the Constitution. If we understand these criteria correctly, had they been in effect in 1993 they would not have permitted the existing districts to be drawn, and their future application could hamper the ability of the city to draw nonretrogressive redistricting plans in compliance with Section 5.

Although city officials and members of the charter review committee established in 1997 presumably were aware of the prior history of litigation under the Voting Rights Act and the Attorney General's 1992 objection, the information provided by the city in support of its application for preclearance of the instant changes contains remarkably little acknowledgment of these past events or their relevance to our review under Section 5 of the city's preclearance request. For example, the city council, which appointed the charter review committee, apparently provided little direction to the committee regarding factors that should be considered in proposing changes that would affect voting, such as whether its proposals complied with Section 2 of the Voting Rights Act, 42 U.S.C. 1973, and satisfied the nonretrogression standard of Section 5. In response to a specific inquiry on this subject, you informed us simply that "the Charter Review Committee did not discuss in depth the Attorney General's 1992 objection." These facts, viewed in light of the position adopted by the council before the committee began

its work that it would put before the voters any proposed charter change approved by a majority of the committee, support an inference that the council gave very little independent consideration to the serious voting rights issues implicated by the charter committee's work and the potential impact of its efforts on the political participation opportunities of minority voters.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. Georgia v. United States, 411 U.S. 526 (1973); see also 28 C.F.R. 51.52. In light of the considerations discussed above, I cannot conclude that your burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the change in the method of election to four single-member districts and two at-large seats, the adoption of numbered posts for the at-large seats, the adoption of a majority vote requirement for the election of city officers, and the proposed redistricting criteria.

We note that under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed changes neither have the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. See 28 C.F.R. 51.44. In addition, you may request that the Attorney General reconsider the objection. See 28 C.F.R. 51.45. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the objected-to changes continue to be legally unenforceable. Clark v. Roemer, 500 U.S. 646 (1991); 28 C.F.R. 51.10.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the City of Galveston plans to take concerning this matter. If you have any questions, you should call George Schneider (202-307-3153), an attorney in the Voting Section.

Sincerely,

Bill Lann Lee
Acting Assistant
Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

July 16, 1999

Mr. Robert Gorsline
City Secretary
601 South First Street
Lamesa, Texas 79331

Dear Mr. Gorsline:

This refers to the deannexation by referendum of property previously annexed under Ordinance No. O-06-98, and an annexation (Ordinance No. O-05-99) for the City of Lamesa in Dawson County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your response to our April 5, 1999, request for additional information regarding the deannexation on April 27, 1999, and your submission of the 1999 annexation on May 20, 1999.

We have considered carefully the information you have provided, as well as information from the 1990 Census, information from previous submissions from the city, and information and comments from other persons.

The Attorney General does not interpose any objection to the 1999 annexation. However, we note that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the change. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41).

We are unable to reach a similar conclusion with regard to the deannexation. The property that is the subject of the deannexation was annexed in 1998 and received Section 5 preclearance on December 8, 1998. The owner of the property

specifically sought annexation to obtain the necessary city services and rezoning which would permit the construction of a 72-unit apartment complex for occupancy by moderate to low income families. Other assisted housing for the elderly, including housing built by the same developer, already existed in this area, and had apparently been proposed and built with little accompanying controversy. We understand that this housing contains few, if any, minority residents.

According to 1990 Census data, Hispanics and blacks constituted 51 percent of the city's population. Had it not been for the deannexation by referendum, the area annexed by Ordinance No. O-06-98 and its future residents would have become part of City Council District 6, which, according to the 1990 Census, has by far the lowest percentage of minority residents (7 percent) in the city. While it is difficult to predict with certainty the racial and ethnic makeup of the future residents of the proposed housing project, the income limits for occupancy of this housing, considered in light of existing socioeconomic characteristics of the population in Lamesa and Dawson County, indicate that the future residents would more likely reflect the minority percentage of the city as a whole than the minority percentage of District 6.

It appears that elected city officials originally welcomed the request for annexation and the proposed development because of a generally recognized need for additional housing in the city.

Almost immediately, however, the annexation and the proposed development became the subject of intense opposition, led principally by residents of District 6. Opponents of the project appeared at public hearings regarding the annexation and the proposed rezoning of the property to voice their objections.

Following the city council's approval of the annexation and rezoning ordinances, the opponents presented sufficient petitions under the city's referendum procedure to force the council to repeal the ordinances or put them to a citywide vote. At the subsequent referendum election, the voters repealed the ordinances.

The minutes of public meetings and hearings and contemporaneous newspaper articles report on various statements made by the opponents of the project. We have closely examined this public record of statements made by opponents of the development for legitimate non-racial arguments why the annexation and the rezoning ordinances should not be approved. We note that a significant number of opponents' statements were based on who the proposed occupants would be, and included such

terms as "undesirables," "HUD people," "Section 8 people," and "criminal activity that could come from this project." Other opponents stated that they would not oppose the annexation if the development was for elderly housing instead of low to moderate income housing. To be sure, there were other asserted grounds for opposition which were not directed at the prospective tenants (e.g., concerns over flooding or reduced water pressure), but no information has been provided which indicates that these potential problems could not have been dealt with effectively by the city or the developer.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. Georgia v. United States, 411 U.S. 526 (1973); see also 28 C.F.R. 51.52. Our examination of the circumstances regarding the deannexation indicates that the city has not met its burden of showing that a discriminatory purpose to exclude minority voters from taking up residence in District 6 was not a significant factor in the decision to adopt the change. Accordingly, on behalf of the Attorney General, I must object to the proposed deannexation by referendum of the property annexed under Ordinance No. O-06-98.

We note that under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed deannexation neither has the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. See 28 C.F.R. 51.44. In addition, you may request that the Attorney General reconsider the objection. See 28 C.F.R. 51.45. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the deannexation continues to be legally unenforceable insofar as it affects voting. Clark v. Roemer, 500 U.S. 646 (1991); 28 C.F.R. 51.10.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the City of Lamesa plans to take concerning this matter. If you have any questions, you should call George Schneider (202-307-3153), Special Section 5 Counsel in the Voting Section.

Sincerely,

Bill Lann Lee
Acting Assistant
Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

June 5, 2000

David Méndez, Esq.
Bickerstaff, Heath, Smiley,
Pollan, Kever & McDaniel
1700 Frost Bank Plaza
816 Congress Avenue
Austin, Texas 78701-2443

Dear Mr. Méndez:

This refers to the adoption of numbered posts for the Sealy Independent School District in Austin County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your response to our February 14, 2000, request for additional information on April 6 and June 1, 2000; supplemental information from the state was received on June 2, 2000.

We have carefully considered the information you have provided, as well as Census data, information in our files, and information and comments from other interested parties. According to the 1990 Census, 12.7 percent of the school district's total population is black and 15.9 percent is Hispanic. Since 1990, it appears that the school district has experienced growth in its overall population and in the minority share of its population. Minority students within the school district at present constitute a significant percentage of the school district's overall student enrollment (28 percent Hispanic/16 percent black).

Under the existing system, the school district elects its seven-member board of trustees on an at-large basis to three-year staggered terms of office (3-2-2). Only one minority representative, an African American, has been elected to the

school board in recent times. After two unsuccessful efforts, this individual succeeded in gaining election when she ran for office in an election year when three trustee seats were up for election. In that contest in 1992 she placed last among the three winning candidates, which was also true of her reelection in 1995. In her two unsuccessful bids for the school board, she, like other minority candidates, appears to have failed to garner sufficient white voter support to get elected under the at-large system.

In our view, the available information concerning voting patterns within the school district is not inconsistent with a pattern of racially polarized voting, although it does appear that some minority candidates in the school district and other local elections have received a level of support from white voters, as well as from minority voters, sufficient to gain election. By and large, however, this level of white voter support appears to have been reserved for a very small number of minority candidates. Most minority candidates have been unsuccessful in election contests for at-large seats on the school board, as well as for other local offices when they face white opposition. Electoral patterns such as these are typically observed in instances where voting is racially polarized.

The school district now seeks to add to its at-large electoral system a numbered post requirement that, in effect, will convert each election for a seat on the board into a separate election contest. In these separate contests for school board seats, minority-supported candidates are more likely to be pitted against white incumbents or challengers in "head-to-head" contests. Where voting is racially polarized, our experience suggests that minority-supported candidates are more likely to lose because they are unlikely to garner a majority of the votes in the bid for a single seat. Indeed, it appears that the school district's sole minority trustee may not have fared well under the proposed system, given her third place showing in the two successful bids for the board in which she faced white opposition.

The school district maintains, however, that the proposed numbered post requirement will not have a negative impact on minority electoral opportunity for at least three reasons. First, the district asserts that voting within the district is not racially polarized and numbered posts cannot adversely impact minority voters under these circumstances. Second, the district claims that minority voters will not be harmed by the implementation of numbered posts because they do not make use of the technique of "single-shot" voting under the existing system and are too small a share of the voting population to elect on their own a candidate of choice. Hence, the change to numbered posts could not worsen their political participation opportunities. Third, the district posits that the addition of

numbered posts will not harm minority voters because under the proposed system, unlike the existing system, white voters will not be able to utilize the technique of "single-shot" voting, which denies minority candidates the white votes needed to gain election under the at-large system.

With regard to the district's first assertion concerning the existence of polarized voting, we have noted above that based on the information available to us there is evidence of such a pattern of voting. We have been unable, however, to conduct a more particularized analysis of the school district's claim in this regard, given, among other things, several deficiencies in the information that has been provided. For example, election returns by voting precinct for school district contests in which minority candidates participated were not provided to us, except for the May 2000 election returns forwarded to us on June 1, 2000. And, the consolidated returns that were provided did not include in several instances the total number of voters who voted in a particular school district election, all of which is important information in the analysis of voting behavior. Finally, no information was provided for elections in which minority candidates participated for municipal offices other than for the City of Sealy.

In support of its argument regarding the absence of polarized voting, the school district relies in large part on the following elections involving minority candidates: 1) the election without opposition of a minority candidate who was first appointed to fill a vacant constable position in Precinct 4 (this candidate also happens to be the husband of the minority school board trustee); 2) the third place election and reelection of the incumbent African-American trustee, who is the only minority to ever serve on the school board; and 3) the election of a single minority candidate to the five-member city council for the City of Sealy, despite numerous unsuccessful candidacies of minority candidates in a city with a combined 1990 minority population share of 38 percent. We are not persuaded that these limited instances of minority electoral success under the circumstances noted above demonstrate the absence of polarized voting within the school district, given the lack of success generally experienced by minority candidates.

The school district's second claim is that the proposed change will not harm minority-supported candidates because minority voters do not single-shot vote and, by themselves, are too small a share of the voting population to control the outcome of an at-large election. This reasoning, however, does not fully embrace the level of minority electoral success, albeit limited, that has been achieved to date within the school district. While it does appear that under the existing at-large, staggered term election system there are limited opportunities for the effective use of single-shot voting, a candidate apparently preferred by

the minority community has gained election to the school board with significant crossover from white voters. This minority candidate ran successfully only in years in which there were three seats up for election and, even then, placed last among the winning candidates when there was white opposition. As noted earlier, it is questionable whether this minority candidate, the incumbent African-American trustee, could continue under the proposed system to be elected to the school board because she would have to place first in contests in which there was white opposition.

Finally, as we understand it, the school district's third claim is that the proposed change may actually benefit minority voters by ensuring that white voters will not be able to "single-shot" vote for a white candidate and thereby deny minority candidates the white votes they need in order to win election. Our experience analysing the impact of electoral devices such as the proposed numbered posts requirement does not support this conclusion. It is true that the implementation of numbered posts will prevent any use of the technique of "single-shot" voting. In our experience, however, "single-shot" voting is generally utilized by minority voters to boost the effect of their support for a preferred candidate in multi-seat, at-large election contests where voting is racially polarized, rather than by white voters who are a majority of the electorate; no information provided to us during our review of the instant submission would require a different conclusion. Implicit in this claim by the school district, however, is the view that when white voters limit their vote to a single candidate, they are more likely to choose a white rather than a minority candidate. This observation is consistent with our experience and adds to the evidence indicating that in single-seat contests for the school board, minority-supported candidates are unlikely to place first ahead of white candidates, and, indeed, are in a worse position than under the existing at-large system to elect candidates of their choice.

Under these circumstances, I am unable to conclude as I must under Section 5 that the school district has met its burden of demonstrating that the submitted change has neither a discriminatory purpose nor a discriminatory effect. Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.52). Therefore, on behalf of the Attorney General, I must object to the addition of numbered posts for the Sealy Independent School District.

We note that under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed change neither has the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. See 28 C.F.R. 51.44. In addition, you

may request that the Attorney General reconsider the objection. See 28 C.F.R. 51.45. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the use of numbered posts by the school district continues to be legally unenforceable. Clark v. Roemer, 500 U.S. 646 (1991); 28 C.F.R. 51.10.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the Sealy Independent School District plans to take concerning this matter. If you have any questions, you should call Deanne B. Ross (202-514-6331), an attorney in the Voting Section.

Sincerely,

Bill Lann Lee
Acting Assistant
Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

P.O. Box 65808
Washington, D.C. 20035-5808

Telephone (202) 514-2151

September 24, 2001

Cheryl T. Mehl, Esq.
Schwartz & Eichelbaum
800 Brazos Street
Suite 870
Austin, Texas 78701

Dear Ms. Mehl:

This refers to the change in the method of election from single-member districts to an at-large system employing cumulative voting, its implementation schedule, and the subsequent revision of the implementation schedule as subsequently revised for the Haskell Consolidated Independent School District in Haskell, Knox, and Throckmorton Counties, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your responses to our February 5, 2001, request for additional information on July 25, and September 5, 6, 7, and 12, 2001.

We have considered carefully the information you have provided, as well as Census data, and comments and information from other interested parties. According to the 2000 Census, the Haskell Consolidated Independent School District [the district] has a population of 3,845, of whom 19.7 percent are Hispanic and 3.2 percent are black persons.

Our analysis of the district's electoral history indicates that under the current method of election, which utilizes seven single-member districts, Hispanic voters have been able to elect candidates of their choice to office in at least one district. We note that this election method resulted from the settlement of federal litigation claiming that the previous method, an at-large

system with staggered terms, violated Section 2 of the Voting Rights Act. League of United Latin American Citizens, District 5 LULAC v. Haskell Consolidated Independent School Districts, No. 193-CV-0178(C) (N.D. Tex. Oct. 21, 1994). The school district implemented the single-member district system, which contained one district with a Hispanic population majority, in 1995.

Under a cumulative voting system, voters are allocated a number of votes equal to the number of offices that are being contested at that particular election and can assign all of their votes to one candidate. Thus, a candidate supported by voters who are a minority of the electorate can win with support from fewer voters than in a traditional at-large election. A statistical measure, known as the "threshold of exclusion," can determine the lowest percentage of support from a single group that ensures their candidate will win no matter what other voters do. This level of support is 33 percent in a two-seat race and 25 percent in a three-seat race. Thus, for Hispanic voters to elect a candidate of their choice in a three-seat contest, they must either constitute 25 percent of the electorate or be able to count on enough non-Hispanic votes to reach that threshold. The school district has conceded that it will be virtually impossible for minority voters to elect at least one candidate of their choice under the board's proposed method of election without non-Hispanic cross-over voting. Accordingly, we have examined the ability of candidates supported by the Hispanic community to attract non-Hispanic votes in past elections.

Only one Hispanic candidate had been elected to the board of trustees prior to the implementation of single-member districts in 1995. From 1981 to 1994, there were five attempts by four Hispanic candidates to win a seat on the school board. Based on the information provided by the district, in only one instance has a Hispanic candidate's vote total exceeded the threshold of exclusion. In the 1993 contest for Place 1, a Hispanic candidate's vote total exceeded the threshold by only 0.8 percentage points. Accordingly, based on the information available, it appears that candidates favored by the Hispanic community have not consistently received significant non-Hispanic cross-over voting, much less at the levels claimed by the district.

Given the demographics of the school district and apparent voting patterns within it, the jurisdiction has not carried its burden that the proposed change will not significantly reduce the ability of minority voters to elect candidates of their choice to the school board.

We have also examined the reasons proffered by the district in support of the change, such as allegedly low voter turnout during the time that it utilized single-member districts as compared to purportedly higher turnout under the at-large system. An analysis of past voter turnout information does not support the board's position. For example, in May 2001, the board claims that less than one percent of the registered voters in District 1 cast a ballot. A closer examination indicates that the candidate for that position was unopposed and the election would have been cancelled, with the candidate being sworn into office, had there not been another office on the ballot being contested.

Moreover, in both the Section 5 submission and at the February 10, 2000, public hearing, school board officials claimed that voter turnout was higher in at-large elections. The district cited the 1993 election, calculating that 1,465 persons voted, a 64.5 percent turnout rate, and, the 1994 election in which 1,863 persons, or 73 percent of the registered voters voted, as evidence of the need to return to at-large elections. This assertion does not withstand close scrutiny. In both of these elections, two numbered posts were up for election and a voter could vote for both posts. According to the 1993 election returns, there were 730 votes for Place I candidates and 735 votes for Place II candidates for a total of 1,465. The 1994 figure of 1,863 is the result of similar calculation. The only way to arrive at the district's numbers is to assume that every voter who cast a ballot for one post chose not to vote for the second office. We do not believe that such an assumption is warranted here.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5, 28 C.F.R. 51.52. In light of the considerations discussed above, I cannot conclude that your burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the change to cumulative voting with staggered terms.

In its request for preclearance, the district notes that if, in fact, the change is retrogressive, individuals in the minority community would be free either to petition the board to change the method of election or to institute further litigation. This suggestion ignores the essential purpose of Section 5, which is to ensure that gains achieved by minority voters not be subverted by retrogressive changes. Accordingly, we can not accede to the

district's request.

We note that under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed changes neither have the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. See 28 C.F.R. 51.44. In addition, you may request that the Attorney General reconsider the objection. See 28 C.F.R. 51.45. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the changes continue to be legally unenforceable. Clark v. Roemer, 500 U.S. 646 (1991); 28 C.F.R. 51.10.

The Attorney General will make no determination regarding the submitted implementation schedule because it is dependant upon the objected to change in the method of election.

We understand that the school district employs Spanish language election procedures. "Spanish language election procedures" refers to such matters as the procedures for translating election-related information and materials (e.g., notices, advertisements, informational pamphlets, ballots) into Spanish (include examples of such documents), procedures for confirming the accuracy of the translations, and the procedures used to provide oral assistance or information in Spanish at polling places, early voting locations, as well as publicity in Spanish regarding the availability of Spanish language assistance. See Interpretive Guidelines: Implementation of the Provisions of the Voting Rights Act Regarding Language Minority Groups, 28 C.F.R., Part 55 (copy enclosed).

Our records fail to show that this change affecting voting has been submitted to the United States District Court for the District of Columbia for judicial review or to the Attorney General for administrative review as required by Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. If our information is correct, it is necessary that this change either be brought before the District Court for the District of Columbia or submitted to the Attorney General for a determination that it does not have the purpose and will not have the effect of discriminating on account of race, color, or membership in a language minority group. Changes which affect voting are legally unenforceable without Section 5 preclearance. Clark v. Roemer, 500 U.S. 646 (1991); Procedures for the Administration of Section 5 (28 C.F.R. 51.10).

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action Haskell Consolidated Independent School District plans to take concerning this matter. If you have any questions, you should call Ms. Judybeth Greene (202-616-2350), an attorney in the Voting Section. Refer to File No. 2001-2924 in any response to this letter so that your correspondence will be channeled properly.

Sincerely,

Ralph F. Boyd, Jr.
Assistant Attorney General
Civil Rights Division

Enclosure

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

NOV 16 2001

The Honorable Geoffrey Connor
Acting Secretary of State
P.O. Box 12060
Austin, Texas 78711-2060

Dear Secretary Connor:

This refers to the 2001 redistricting plan for the Texas House of Representatives, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your submission on August 17, 2001; supplemental information was received through October 12, 2001.

We have considered carefully the information you have provided, as well as census data, comments and information from other interested parties, and other information. As discussed further below, I cannot conclude that the State's burden under Section 5 has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the 2001 redistricting plan for the Texas House of Representatives.

The 2000 Census indicates that the State has a total population of 20,851,820, of whom 11.5 percent are African American and 31.9 percent are Hispanic. The State's voting age population (VAP) is 14,965,061, of whom 10.9 percent are African American and 28.6 percent are Hispanic. One of the most significant changes to the State's demography has been the increase in the Hispanic population. Between 1990 and 2000, the Hispanic share of the State's population increased from 26 to 31.9 percent. Statewide, African American population remained stable.

Under the Voting Rights Act, a jurisdiction seeking to implement a proposed change affecting voting, such as a redistricting plan, must establish that, in comparison with the status quo, the change does not "lead to a retrogression" in the position of minority voters with respect to the "effective exercise of the electoral franchise." See Beer v. United States, 425 U.S. 130, 141 (1976). In addition, the jurisdiction must establish that the change was not adopted with an intent to retrogress. Reno v. Bossier Parish School Board, 528 U.S. 320, 340 (2000). Finally, the submitting authority has the burden of demonstrating that the proposed change has neither the prohibited

purpose nor effect. Id. at 328; see also Procedures for the Administration of Section 5 (28 C.F.R. 51.52).

The constitutional requirement of one-person, one-vote mandated that the State reapportion the house districts in light of the population growth since the last decennial census. We note that the redistricting plan submitted by the State was passed by the Legislative Redistricting Board (LRB), which had assumed reapportionment responsibility under Article III of the Texas Constitution after the State legislature was unable to enact a redistricting plan.

The LRB held a series of meetings and hearings, culminating with a meeting on July 24, 2001, at which it considered new plans submitted by LRB members. The LRB adopted three amendments making substantive changes to the plan then under consideration. These amendments consisted of approximately 14 discrete changes.

The Texas House of Representatives consists of 150 members elected from single-member districts to two-year terms. Under the existing plan, there are 57 districts that are combined majority minority in total population, and 53 are combined majority minority in voting age population. With regard to those with a majority minority voting age population, 31 districts have a majority Hispanic voting age population, seven have a majority black voting age population, and the remaining 15 districts have a combined minority majority voting age population. There are 27 districts where a majority of the registered voters have a Spanish surname.

An initial issue arises as to the appropriate standard for determining whether a district is one in which Hispanic voters can elect a candidate of choice. The State of Texas has provided, and accepted as a relevant consideration, Spanish-surnamed registered voter data as well as election return information and voting age population data from the census. We agree with the State's assessment, although we also consider comments from local individuals familiar with the area, historical election analysis, analysis of local housing trends, and other information intended to create an accurate picture of citizenship concerns. Campos v. Houston, 113 F.3d 544, 548 (5th Cir. 1997).

Our examination of the State's plan indicates that it will lead to a prohibited retrogression in the position of minorities with respect to their effective exercise of the electoral franchise by causing a net loss of three districts in which the minority community would have had the opportunity to elect its

candidate of choice. Although there is an increase in the number of districts in which Hispanics are a majority of the voting age population, the number of districts in which the level of Spanish surnamed registration (SSRV) is more than 50 percent decreases by two as compared to the benchmark plan. Moreover, we note that in two additional districts SSRV has been reduced to the extent that the minority population in those districts can no longer elect a candidate of choice. In the State's plan these four reductions are only offset by the addition of a single new majority minority district - District 80 - leaving a net loss of three.

As described more fully below, when coupled with an analysis of election returns and other factors, we conclude that minority voting strength has been unnecessarily reduced in Bexar County, South Texas, and West Texas. Because retrogression is assessed on a state-wide basis, the State may remedy this impermissible retrogression either by restoring three districts from among these problem areas, by creating three viable new majority minority districts elsewhere in the State, or by some combination of these methods.

With regard to the problem areas we have identified, in Bexar County the 2000 Census data indicated that the county population constituted 10.4 ideal districts. As a result of the State's constitutional requirement of assigning a whole number of districts to the more populous counties, known as the "county line rule," the State reduced the number of districts in the county from 11 in the existing plan to 10. Although the State has admitted that the reduction to 10 would not have precluded it from maintaining the number of majority Hispanic districts at seven, it in fact chose to reduce that number to six. Initially, the State asserted that it had created an additional majority Hispanic district in Harris County so as to offset the loss of the Bexar County district and identified District 137 as a compensating district. Because the State's obligation under Section 5 is to ensure that the redistricting plan, as a whole, is not retrogressive, such a course of action is not impermissible. However, in the supplemental materials that were provided on October 10, 2001, the State notified us that if any district should be considered as the replacement, District 80 in South Texas - not District 137 - should be the one which offsets the loss of the majority Hispanic district in Bexar County.

When the State is considered as a whole, however, this argument is ultimately unpersuasive. While District 80 indeed adds an additional district in which Hispanic voters in South Texas will have the opportunity to elect a candidate of their choice, in two other districts, as discussed below, they lose

this opportunity, resulting in the net loss for Hispanic voters of one district in South Texas.

In South Texas Hispanic voters will lose the opportunity to elect their candidate of choice in District 35. The new district is created from existing Districts 31 and 44 and pairs an nonminority and a Hispanic incumbent. The Hispanic incumbent currently represents a district which has a Spanish surname registration level of 55.6 percent; that level drops to 50.2 percent in the proposed plan while the Hispanic voting age population decreases from 57.8 to 52.1 percent. Over half (58%) of the new district's configuration is from the nonminority incumbent's former district. Our analysis indicates that District 35 as drawn will preclude Hispanic voters from electing their candidates of choice.

In addition, in Cameron County District 38 reverts to a configuration that previously precluded Hispanic residents from electing a candidate of their choice. The Spanish surnamed registration level is reduced from 70.8 to 60.7 percent, and the Hispanic voting age population decreases from 78.7 percent to 69.6 percent. The State removed over 40 percent of the core of existing District 38, 90 percent of whom are Hispanic persons, and replaced it with population that is 45 percent nonminority. While the Hispanic voters in District 38 still remain a majority of voters in the district, because the area is subject to polarized voting along racial lines and under the particular circumstances present in this district, it is doubtful that Hispanics will be able to elect their candidate of choice.

Finally, the districts adjacent to Districts 35 and 38 have levels of Spanish surnamed registered voters exceeding 80 percent, and Hispanic voting age population exceeding 90 percent, both of which are far beyond what is necessary for compliance with the Voting Rights Act. Thus the reductions in Districts 35 and 38 were avoidable had the State avoided packing Hispanic voters into the districts adjacent to them. Moreover, overall the State fragments the core of majority Hispanic districts in this area, thus affecting member-constituent relations and existing communities of interest in these districts at a disproportionately higher rate than it does other districts in this part of the State. This fragmentation is unnecessary and disadvantages Hispanic voters by requiring them to establish new relations with their elected representatives. It also deviates from the State's traditional redistricting principles in a manner that exacerbates the retrogression in South Texas.

As for West Texas, Hispanic voters lose the opportunity to elect their candidate of choice in proposed District 74. The Spanish surname registration level decreases from 64.5 to 48.7 percent, and the Hispanic voting age population decreases from 73.4 to 57.3 percent. Significantly, the State did not need to reconfigure existing District 74 because the existing configuration under the 2000 Census was underpopulated by only 894 persons, a deviation of 0.64 percent. Such unnecessary population movement supplements our finding in our election analysis that Hispanic voters in District 74 will suffer a retrogression in the effective exercise of the electoral franchise. See Guidance Concerning Redistricting and Retrogression under Section 5 of the Voting Rights Act, 42 U.S.C. 1973c, 66 Fed. Reg. 5411, 5413 (Jan. 18, 2001).

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. Georgia v. United States, 411 U.S. 526 (1973); see also Procedures for the Administration of Section 5 (28 C.F.R. 51.52). In light of the considerations discussed above, I cannot conclude that your burden has been sustained in this instance. On behalf of the Attorney General, I must object to the 2001 redistricting plan for the Texas House of Representatives. Beyond the specific discussion above, however, in all other respects we find that the State has satisfied the burden of proof required by Section 5.

We note that under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed changes neither have the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. See 28 C.F.R. 51.44. In addition, you may request that the Attorney General reconsider the objection. See 28 C.F.R. 51.45. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the redistricting plan continues to be legally unenforceable. Clark v. Roemer, 500 U.S. 646 (1991); 28 C.F.R. 51.10.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the State of Texas plans to take concerning this matter. If you have any questions, you should call Mr. Robert Berman (202-307-3718), Deputy Chief of the Voting Section.

Sincerely,

Ralph F. Boyd, Jr.
Assistant Attorney General
Civil Rights Division

U. S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

June 21, 2002

Denise Nance Pierce, Esq.
Bickerstaff, Heath, Smiley,
Pollan, Kever & McDaniel
816 Congress Avenue, Suite 1700
Austin, Texas 78701-2443

Dear Ms. Pierce:

This letter is in reference to the 2001 redistricting plans for the commissioners court, justice of the peace, and constable districts; the renumbering and realignment of voting precincts; two polling place changes; the elimination and renaming of polling places; and the temporary additional early voting locations and their hours for Waller County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your responses to our February 6, 2002, request for additional information through June 10, 2002.

We have considered carefully the information you have provided, as well as census data, comments from interested parties, and other information, including the county's previous submissions. As discussed further below, I cannot conclude that the county's burden under Section 5 has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the 2001 redistricting plans for the commissioners court, justice of the peace, and constable districts.

The 2000 Census indicates that Waller County has a total population of 32,663 persons, of whom 9,565 (29.3%) are black and of whom 6,344 (19.4%) are Hispanic. The county's voting age population is 24,277, of whom 7,601 (31.3%) are black and 3,871 (15.9%) are Hispanic.

The county is governed by a five-member commissioners court. Voters elect four commissioners to four-year, staggered terms from single-member districts, called precincts. The justice of the peace and constable districts are coterminous with the commissioners court districts. Under the census data above, there are two districts under the benchmark plan, Precinct 1 and Precinct 3, in which minority persons are a majority of the voting age population: Precinct 1 has a total minority voting age population of 52.5 percent, while Precinct 3 has a total minority voting age population of 71.9 percent.

In contrast, the proposed 2001 redistricting plans contain only one district in which minority persons are a majority of the voting age population. According to the information that you provided, the black percentage of the voting age population in proposed Precinct 1 voting age population drops to 29.7 percent. Within the context of electoral behavior in Waller County, the county has not established that implementation of this plan will not result in a retrogression in the ability of minority voters to effectively exercise their electoral franchise. Moreover, the viability of alternative plans demonstrates that the potential retrogression of the proposed plan is avoidable.

Our analysis of county elections shows that minority voters in Precinct 1 have been electing candidates of choice since 1996, and that those candidates are elected on the basis of strong, cohesive black and Hispanic support. Our statistical analysis also shows that white voters do not provide significant support to candidates sponsored by the minority community, and that interracial elections are closely contested. For example, the black candidate for commissioner in Precinct 1 prevailed in the last election by two votes. As a result, the proposed reduction in the minority voting age percentage in Precinct 1 casts substantial doubt on whether minority voters would retain the reasonable opportunity to elect their candidate of choice under the proposed plan, particularly if the current incumbent in Precinct 1 declines to run for office again.

Our review of the county's benchmark and proposed plans as well as the alternative plans presented to the county, suggests that the significant reduction in minority voting age population percentage in Precinct 1 in the proposed plan, and the likely resulting retrogressive effect on the ability of minority voters to elect candidates of choice, was neither inevitable nor required by any constitutional or legal imperative. Illustrative plans demonstrate that it is possible to avoid any retrogression in Precinct 1, maintain the minority voting strength in Precinct 3, and meet the county's redistricting criteria. Accordingly, we

are not persuaded by the county's contention that a reduction in minority voting strength in Precinct 1 was necessary to preserve the minority voting strength in Precinct 3 if one is to honor the redistricting criteria used by the county.

Under the Voting Rights Act, a jurisdiction seeking to implement a proposed change affecting voting, such as a redistricting plan, must establish that, in comparison with the status quo, the change does not "lead to a retrogression" in the position of minority voters with respect to the "effective exercise of the electoral franchise." See Beer v. United States, 425 U.S. 130, 141 (1976). If the proposed plan materially reduces the ability of minority voters to elect candidates of their choice to a level less than what they enjoyed under the benchmark plan, preclearance must be denied. State of Georgia v. Ashcroft, C.A. No. 2001-2111 (D.D.C. Apr. 5, 2002), slip op. at 117-18. In addition, the jurisdiction must establish that the change was not adopted with an intent to retrogress. Reno v. Bossier Parish School Board, 528 U.S. 320, 340 (2000). Finally, the submitting authority has the burden of demonstrating that the proposed change has neither the prohibited purpose nor effect. Id. at 328; see also Procedures for the Administration of Section 5 (28 C.F.R. 51.52).

In light of the consideration discussed above, I cannot conclude that your burden of showing that a submitted change does not have a discriminatory effect has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the submitted redistricting plans.

We note that under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed changes neither have the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. See 28 C.F.R. 51.44. In addition, you may request that the Attorney General reconsider the objection. See 28 C.F.R. 51.45. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the changes continue to be legally unenforceable. Clark v. Roemer, 500 U.S. 646 (1991); 28 C.F.R. 51.10.

Please note that the Attorney General will make no determination regarding the submitted realignment and renumbering of voting precincts, the polling place changes, the elimination and renaming of polling places, and the temporary additional early voting locations and their hours because those changes are dependent upon the redistricting plan.

Further, in our letter of February 2, 2002, we informed you that, under the Voting Rights Act, changes, such as the county's proposed redistricting plans, are not legally enforceable until the jurisdiction has obtained Section 5 preclearance for those changes. Clark v. Roemer, 500 U.S. 646 (1991). However, it is our understanding that on March 12, 2002, Waller County conducted an election, which implemented the proposed plan, without such preclearance. Please inform us of the action Waller County plans to take regarding both the objection interposed by this letter as well as the conduct of the March 12 primary election without the requisite preclearance.

If you have any questions on either of these matters, you should call Mr. Timothy Mellett (202-307-6262), an attorney in the Voting Section. Refer to File Nos. 2001-3951 and 2002-2142 in any response to this letter so that your correspondence will be channeled properly.

Sincerely,

J. Michael Wiggins
Acting Assistant Attorney
General

U. S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General *Washington, D.C. 20035*

Wallace Shaw, Esquire
P.O. Box 3073
Freeport, Texas 77542-1273

AUG 12 2002

Dear Mr. Shaw:

This refers to the procedures for conducting the May 4, 2002, special city charter amendment election and the change in the method of electing city council members from districts to at large for the City of Freeport in Brazoria County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your responses to our May 14, 2002, request for additional information through July 31, 2002.

With regard to the special election, the Attorney General does not interpose any objection to the specified change. However, we note that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the change. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41).

As to the change to at-large elections with numbered positions, we have carefully considered the information you have provided, as well as census data, comments and information from other interested parties, and other information, including the city's previous submission of the adoption of the current districting system for the election of council members. Based on our analysis of the information you have provided, on behalf of the Attorney General, I am compelled to object to the submitted change in the method of election.

According to the 2000 Census, the city has a total population of 12,708, of whom 6,614 (52.0 percent) are Hispanic and 1,696 (13.3 percent) are black persons. Hispanic residents comprise 47.3 percent, and black residents 12.3 percent, of the city's voting age population. Approximately 29 percent of the city's registered voters are Spanish-surnamed individuals.

Until 1992, the city elected its four-member council on an at-large basis. In that year it began to use the single-member district system, which it had adopted as part of a settlement of voting rights litigation challenging the at-large system. Under the subsequent single-member district method of election, minority voters have demonstrated the ability to elect candidates of choice in at least two districts, Wards A and D. The city now proposes to reinstitute the at-large method of election. Our analysis shows that the change will have a retrogressive effect on the ability of minority voters to elect a candidate of their choice.

Elections in the city are marked by a pattern of racially polarized voting. Under the city's previous use of at-large elections, no Hispanic-preferred candidates were successful until 1990. In that election, one such candidate narrowly won office when several Anglo-supported candidates split the vote. In contrast, a Hispanic-preferred candidate won over significant Anglo opposition in 1992 in the first election held under the single-member district system. Since then, three other minority-preferred candidates have been successful in their wards. However, minority voters remain unable to elect their candidates of choice in municipal at-large elections. Thus, a return to an electoral system where all council offices are elected on an at-large basis will result in a retrogression in their ability to exercise the electoral franchise that they enjoy currently. A voting change has a discriminatory effect if it will lead to a retrogression in the position of members of a racial or language minority group (i.e., will make members of such a group worse off than they had been before the change) with respect to their opportunity to exercise the electoral franchise effectively. Reno v. Bossier Parish School Board, 528 U.S. 320, 328 (2000); Beer v. United States, 425 U.S. 130, 140-42 (1976).

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.52). In light of the considerations discussed above, I cannot conclude that your burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the change in the method of election.

We note that under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed change neither has the purpose nor will have the effect of denying or abridging the

right to vote on account of race, color, or membership in a language minority group. See 28 C.F.R. 51.44. In addition, you may request that the Attorney General reconsider the objection. See 28 C.F.R. 51.45. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the submitted change continues to be legally unenforceable. Clark v. Roemer, 500 U.S. 646 (1991); 28 C.F.R. 51.10.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the City of Freeport plans to take concerning this matter. If you have any questions, you should call Mr. Robert Lowell (202-514-3539), an attorney in the Voting Section.

Sincerely,

J. Michael Wiggins
Acting Assistant Attorney
General

OCT 2 7 1980

Carl R. Pigeon, Esq.
City Attorney
Hopewell, Virginia 23860

Dear Mr. Pigeon:

This is in reference to the referendum on a proposed amendment to the city charter that would decrease the number of councilmen from seven to five in the City of Hopewell, Virginia, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended. Even though the referendum has not yet been held, we understand that you desire to have a determination on the merits of the proposed change at this time. Your submission was completed on August 29, 1980, and although we noted your request for expedited consideration, we have been unable to respond until this time.

We have given careful consideration to the information you have provided, as well as to comments and information provided by other interested parties. Our analysis reveals that blacks constitute about twenty percent of the population of the City of Hopewell. Although a black candidate has run for the city council on a number of occasions since 1964, no black has ever been elected to the city council. Analysis of precinct returns demonstrates that voting in the city generally follows racial lines. In the context of plurality-win, at-large elections, the decrease in the number of members of the Hopewell City Council will have the potential for decreasing the opportunity of blacks to elect representation of their choice to the city council. In fact, the information presently available to us shows that the black candidate who has run for council fared better under the seven-member council system than under the five-member council system.

Under these circumstances, I am unable to conclude, as I must under the Voting Rights Act, that the proposed change will not have a racially discriminatory effect. I must therefore, on behalf of the Attorney General, interpose an objection to the proposed decrease in the number of councilmen from seven to five, even though we do not interpose any objection to the holding of a referendum on the question.

We note, however, that the retrogressive effect upon black voters of a decrease in the number of councilmen could be compensated by a change in the method of electing city councilmen that might provide a more realistic possibility of access by blacks to the political process. For example, were the city to enact fairly drawn single-member districts in conjunction with the proposed decrease in the number of councilmen from seven to five, the Attorney General would be willing to reconsider the objection interposed today.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that this change has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color or membership in a language minority group. In addition, the Procedures for the Administration of Section 5 (28 C.F.R. 51.21(b) and (c), 51.23, and 51.24) permit you to request the Attorney General to reconsider the objection. However, until the objection is withdrawn or the judgment from the District of Columbia Court obtained, the effect of the objection by the Attorney General is to make the decrease in the number of councilmen from seven to five legally unenforceable.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us within twenty days of your receipt of this letter what course of action the City of Hopewell plans to take with respect to this matter. If you have any questions concerning this letter, please feel free to call Ms. Hallue Wright (202-724-7170) of our staff, who has been assigned to handle this submission.

Sincerely,

Drew S. Days III
Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

17 JUL 1981

Perkins Wilson, Esq.
Assistant Attorney General
Supreme Court Building
1101 East Broad Street
Richmond, Virginia 23219

Dear Mr. Wilson:

This is in reference to the reapportionment of the Virginia Senate by Chapter 2, 1981 Acts of the General Assembly (Special Session), submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended. Your submission was received on May 19, 1981.

We have given careful consideration to the materials you have submitted, as well as information and comments of other interested parties and information contained in other Department files. On the basis of our review, the Attorney General does not interpose any objection to the Senate reapportionment except with respect to the districts discussed below.

At the outset, we note that on May 7, 1971, the Attorney General found it necessary to interpose an objection to the division line between Senate districts 5 and 6 in the City of Norfolk. At that time the Department concluded that "[t]he division of Senate districts 5 and 6, which divides concentrations of Negro voters, appears contorted and does not conform to natural boundaries", while more natural boundaries appeared feasible, which would have avoided such an adverse effect on the black voting strength. As a result of that objection the 1971 legislation was amended to relocate the boundary between districts 5 and 6 in such a way as to eliminate substantially the bifurcation of black concentrations in the city. As so modified, the plan was precleared on August 13, 1971.

The precleared plan was not implemented because of the lack of accurate data regarding the residence of Naval personnel. Instead, the federal court ordered an interim plan combining districts 5, 6, and 7 into one multi-member district. That plan was to stay in effect until the General Assembly enacted a single-member district plan consistent with legal requirements. See Mahon v. Howell, 410 U.S. 315 (1973).

Our current analysis shows that one of the most striking elements of the plan presently under submission is the similarity of its characteristics to those of the plan objected to in 1971 insofar as districts 5 and 6 are concerned. Our inquiry has revealed that the boundary between districts 5 and 6 in the 1981 plan cuts through the black community in such a way that neither district has more than a 37-percent black population. At the same time, our analysis shows that the Senate rejected an alternative configuration which would have combined contiguous black neighborhoods, producing a district in which black persons would have constituted a majority. There is substantial information that this choice of district lines was made with the full awareness and expectation that it would fragment the black electorate and create two majority white districts.

In its consideration of the current plan, the Virginia Senate was aware that in 1971 the Attorney General had found it necessary to interpose an objection to the then proposed configuration of districts 5 and 6 because those lines appeared unnecessarily to fragment concentrations of black voters, and that that objection had been overcome by the reconstruction of those districts in a way which did not divide the black concentration in the southern part of the city. The Commonwealth has presented no plausible non-racial justification for its choice of district lines in Norfolk, strikingly similar to the unacceptable 1971 plan.

Under these circumstances I am unable to conclude, as I must under the Voting Rights Act, that the presently proposed district lines within Norfolk were drawn without any discriminatory racial purpose or effect. Accordingly, I must, on behalf of the Attorney General, interpose an objection to Chapter 2, 1981 Acts of the Virginia General Assembly (Special Session) insofar as districts 5 and 6 of the plan are concerned.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that this change has neither the purpose nor the effect of

denying or abridging the right to vote on account of race, color or membership in a language minority group. In addition, the Procedures for the Administration of Section 5 (Section 51.44, 46 Fed. Reg. 878) permit you to request the Attorney General to reconsider the objection. However, until the objection is withdrawn or the judgment from the District of Columbia Court is obtained, the effect of the objection by the Attorney General is to make the reapportionment of the Virginia Senate legally unenforceable with respect to the districts in question.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us within twenty days of your receipt of this letter of the course of action the State of Virginia plans to take with respect to this matter. If you have any questions concerning this letter, please feel free to call Carl W. Gabel (202-724-7439), Director of the Section 5 Unit of the Voting Section.

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

Perkins Wilson, Esq.
Assistant Attorney General
Supreme Court Building
1101 East Broad Street
Richmond, Virginia 23219

JUL 31 1981

Dear Mr. Wilson:

This is in reference to the reapportionment of the Virginia House of Delegates by Chapter 5, 1981 Acts of the General Assembly (Special Session), submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended. Your submission was completed on July 2, 1981. In accordance with your request, this submission has been reviewed on an expedited basis.

Under Section 5, the Commonwealth of Virginia has the burden of proving that its proposed reapportionment does not represent a retrogression in the position of its black residents, and that the new plan was adopted without any racially discriminatory purpose. See Beer v. United States, 425 U.S. 130 (1976). We have carefully reviewed the material you submitted and for the most part find the proposed reapportionment plan to have neither the purpose nor effect of diluting or abridging the voting rights of black citizens.

However, there is one general area where the proposed plan appears to dilute and fragment black voting strength unnecessarily. According to the 1980 census the southern part of the Commonwealth contains five contiguous rural counties with black population majorities (Brunswick, Greensville, Sussex, Surry and Charles City). The nearby City of Petersburg also has a majority black population of 61.09%. Under the pre-existing apportionment plan four of the five black majority counties were grouped together with New Kent County to make up District 45, which by 1980 census figures was 53.09% black. In the proposed plan each of the five majority black counties is combined with one or more predominently white counties in such a way that there is a black minority in each of the resulting districts (Nos. 26, 27, 35, 41 and 46). We note that one of the resulting districts (No. 27), which combines Nottaway, Dinwiddie and Greensville Counties and Emporia City, connected only by a two mile stretch of the Nottaway River, does not seem to comply with the Commonwealth's standard of compactness.

Testimony prepared for the pending lawsuits indicate that the legislature was aware that dispersing the majority black counties that were in former district 45 would necessarily dilute the voting strength of blacks in this area.

Similarly, the City of Peterburg is combined in the plan with the virtually all white city of Colonial Heights resulting in a district (No. 28) which is 43.66% black. This district was formed notwithstanding the fact that Colonial Heights had historically been associated with Chesterfield County and, in fact, had been combined under the 1971 plan with Chesterfield to form District No. 36 which, with a population of 157,881, could have been continued as a viable three-member district in the new plan. This latter approach was supported by representatives of the Colonial Heights city government. Material submitted to us indicates there are a number of options available that would not have the effect of diluting the voting strength of the black citizens of Petersburg.

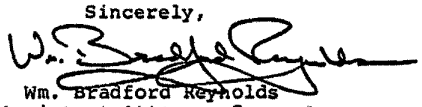
Accordingly, after careful consideration of the materials you have submitted, as well as comments and information provided by other interested parties, I am unable to conclude, as I must under the Voting Rights Act, that the submitted plan for the reapportionment of the House of Delegates is free of any racially discriminatory purpose or effect in the described area. For that reason, I must, on behalf of the Attorney General, interpose an objection to Chapter 5 of the 1981 Acts of the General Assembly of Virginia (Special Session) as it affects the district lines in the SouthsidePetersburg area.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that this change has neither the purpose nor the effect of denying or abridging the right to vote on account of race, color or membership in a language minority group. In addition, the Procedures for the Administration of Section 5 (Section 51.44, 46 Fed. Reg. 878) permit you to request the Attorney General to reconsider the objection. However, until the objection is withdrawn or the judgment from the District of Columbia Court is obtained, the effect

of the objection by the Attorney General is to make the reapportionment of the Virginia House of Delegates legally unenforceable with respect to the districts in question.

We are aware that there is a severe time problem if the Commonwealth is to hold timely elections for the General Assembly. Please be assured that we stand ready to do all we can to assure that any future review of such limited changes as may be necessary to comply with the requirements of Section 5 is accomplished in the most expeditious way possible. If you have any questions concerning this letter, please feel free to call Carl W. Gabel (202-724-7439), Director of the Section 5 Unit of the Voting Section.

Sincerely,



Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

1 MAR 1982

John F. Kay, Jr., Esq.
Mays, Valentine, Davenport & Moore
P.O. Box 1122
Richmond, Virginia 23208

Dear Mr. Kay:

This is in reference to Chapter 68 of the 1981 Acts of the Virginia General Assembly, which transfers to the Petersburg City Council authority for redistricting, and to Petersburg City Ordinance No. 8191, which realigns the councilmanic districts and changes certain voting precinct boundaries and polling place locations for the City of Petersburg, Virginia, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. Your submission was received on December 31, 1981.

With respect to the transfer of authority by Chapter 68, the Attorney General does not interpose any objection to the change in question. However, we feel a responsibility to point out that Section 5 of the Voting Rights Act expressly provides that the failure of the Attorney General to object does not bar any subsequent judicial action to enjoin the enforcement of such change. We caution to add, further, as acknowledged in the submission of the change, that Chapter 68 is in the character of enabling legislation only, and that each actual alteration of district boundaries will be subject to the preclearance requirements of Section 5.

We turn next to Ordinance No. 8191, which in fact changes the boundaries of the city's councilmanic districts. In the course of our analysis of this change we have studied the materials and comments submitted by you as well as those presented by a number of other interested parties, and have reviewed relevant decisions of the federal courts. By its terms, Section 5 places on the submitting authority

the burden of proving that a proposed change is free of any racially discriminatory purpose or effect. The Voting Rights Act proscribes any change which would "lead to a retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise." Beer v. United States, 425 U.S. 130, 141 (1976); and "[a]n official action... taken for the purpose of discriminating against Negroes on account of their race has no legitimacy at all under our constitution or under the statute." City of Richmond v. United States, 422 U.S. 358, 378 (1975).

Applying these principles to your submission, we note that the proposed plan lowers the black proportion in District 1 from 69.6% to 61.5% and from 71.2% to 61.6% in District 4, and that such a diminution was intended by the white city council majority so as to increase white voting strength in those districts. Our analysis indicates that the proposed plan would, in fact, accomplish the intended effect of significantly diminishing the opportunity of black voters to elect candidates of their choice and lead to an actual decline in black representation. Under these circumstances, and in light of other statements by white councilmembers, who comprise a majority of the council, we are unable to conclude that the proposed change is free of racial discrimination as required by the Act. Accordingly I must, on behalf of the Attorney General, interpose an objection to Petersburg Ordinance No. 8191 which realigns the city's councilmanic districts and concomitantly adjusts voting precincts and polling places.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that this change has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color or membership in a language minority group. In addition, the Procedures for the Administration of Section 5 (Section 51.44, 46 Fed. Reg. 878) permit you to request the Attorney General to reconsider the objection. However, until the objection is withdrawn or the judgment from the District of Columbia Court is obtained, the effect of the objection by the Attorney General is to make the proposed redistricting legally unenforceable.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action the City of Petersburg plans to take with respect to this matter. If you have any questions con-

cerning this letter, please feel free to call Carl W. Gabel (202-724-8388), Director of the Section 5 Unit of the Voting Section.

Sincerely,

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

March 12, 1982

Honorable Gerald L. Baliles
Attorney General
Commonwealth of Virginia
Supreme Court Building
101 North Eighth Street
Richmond, Virginia 23219

Dear Mr. Attorney General:

This is in reference to Chapter 16 of the 1981 Acts of Assembly (Special Session), which reapportions the Virginia House of Delegates, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. Your submission was completed on March 5, 1982. In accordance with your request expedited consideration has been given this submission pursuant to Section 51.32 of the Procedures for the Administration of Section 5 (46 Fed. Reg. 877).

We have given your submission careful attention. Our review has encompassed the materials forwarded by your office, relevant decisions of the federal courts, information and comments provided by a variety of interested individuals and groups across Virginia, and information obtained in connection with previous redistricting efforts. In this connection we must note that in 1981 we found it necessary to interpose objections to certain House and Senate district configurations which fragmented or submerged black population concentrations. In light of the alternatives that were available to the State, we were unable to conclude that these apparent departures from a consistent application of the racially neutral guidelines adopted by the Assembly were free of the racial purpose and effect proscribed by the Voting Rights Act.

While a thorough examination of all available information has persuaded us that Chapter 16 satisfies Section 5 requirements in most of the State, the plan's treatment of the following areas raises concerns similar to those which prompted our earlier objections. We note, for example, that Chapter 16 retains the City of Norfolk as a large multi-member district, despite the change to an otherwise uniform policy of utilizing single-member districts. It appears, that the stated rationale for separate treatment of Norfolk (the presence of a large population which does not vote locally) was not considered or applied uniformly throughout the state in this or any previous Virginia apportionment, and that indeed there appears to be no insurmountable impediment to the division of this population among two or more districts. Norfolk's anomalous treatment is of particular relevance in that a fairly apportioned plan of single member districts would provide for two districts with substantial black majorities. Absent a necessary and consistently applied basis for retaining a multi-member district, the proposed Norfolk multi-member district has the inevitable effect of limiting the potential of minorities electing candidates of their choice.

We are similarly concerned with the single-member districts drawn in Newport News, Hampton, Portsmouth, and the alternatively adopted districts in Norfolk. Chapter 16 "packs" most of the concentrated black population of Hampton and Newport News into one 75% black district, a level which appears to be well in excess of that necessary to give black voters a fair opportunity to elect a candidate of their choice, while the remainder of the black concentration is divided among three other districts, all of which have substantial white majorities. Our analysis shows that a fairly drawn plan in this area would contain two districts with substantial black majorities. The black community of Portsmouth is divided between two districts, both with white voting age majorities, even though any alternative plan which respected their strong local community of interest would contain one district with a large black majority.

Finally, while two of the alternative districts defined for the City of Norfolk by Chapter 16 contain sizeable black majorities, one of these, district 90, is so contorted as to be likely to confuse voters and candidates, and to exacerbate the financial and other disadvantages experienced by many black candidates. Each of these configurations would appear to have a potentially detrimental impact on the opportunities of black voters to elect candidates of their choice.

Our investigation has revealed no sound reasons for these departures from the general state policy of maintaining intact local communities of interest. It appears, moreover, that these communities were divided without significant consultation with local minority group members. Under the totality of circumstances, therefore, I am unable to conclude, as I must under Section 5, that the treatment by Chapter 16 of these areas has no discriminatory purpose or effect. Accordingly, I, must, on behalf of the Attorney General, interpose an objection to Chapter 16, 1981 Act of Assembly (Special Session).

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that this change has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color or membership in a language minority group. In addition, the Procedures for the Administration of Section 5 (Section 51.44, 46 Fed. Reg. 878) permit you to request the Attorney General to reconsider the objection. However, until the objection is withdrawn or the judgment from the District of Columbia Court is obtained, the effect of the objection by the Attorney General is to make the proposed reapportionment legally unenforceable.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action the Commonwealth of Virginia plans to take with respect to this matter. If you have any questions concerning this letter, please feel free to call Carl W. Gabel (202-724-8388), Director of the Section 5 Unit of the Voting Section.

Sincerely,

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

June 21, 1982

Richard Crawford Grizzard, Esq.
Commonwealth's Attorney
Southampton County
P. O. Box 406
Courtland, Virginia 23837

Dear Mr. Grizzard:

This is in reference to the redistricting of Southampton County, Virginia, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. Your submission was completed on April 20, 1982.

We have given careful consideration to the information provided by the County as well as to the information available from the 1980 Census of Population and Housing Advance Reports. As a result, our analysis shows that the information submitted by the County is conflicting with respect to the population of the existing districts as well as the population of the proposed districts. For example, our review shows that the present population figures for the existing election districts correlates with the total population for the county's magisterial districts, although the configuration of these two sets of districts appear to be quite different. In addition, other data provided by the county reflect discrepancies which make it impossible for us to determine the effect of the new districting plan upon the minority community.

The Attorney General's Procedures for the Administration of Section 5 of the Voting Rights Act of 1965, 28 C.F.R. 51.39(e), provides, in part, that

> (I)f the evidence as to the purpose or effect of a change is conflicting and the Attorney General is unable to determine that the submitted change does not have the prohibited purpose or effect, an objection shall be interposed to the change.

Because of the state of confusion in the data submitted by the county in support of its redistricting, we are unable to conclude, as we must under the Voting Rights Act, that the proposed redistricting does not have the purpose and will not have the effect of discriminating on the basis of race or color. Accordingly, on behalf of the Attorney General, I must interpose an objection to the use of the redistricting plan here under submission.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that this change has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color or membership in a language minority group. In addition, the Procedures for the Administration of Section 5 (Section 51.44, 46 Fed. Reg. 878) permit you to request the Attorney General to reconsider the objection. Should you decide to request such reconsideration it would be useful to us to have whatever you can provide by way of clarifying and supplementing the data you already have provided. However, until the objection is withdrawn or the judgment from the District of Columbia Court is obtained, the effect of the objection by the Attorney General is to make the redistricting legally unenforceable.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action Southampton County plans to take with respect to this matter. If you have any questions concerning this letter, please feel free to call Carl W. Gabel (202-724-8388), Director of the Section 5 Unit of the Voting Section.

Sincerely,

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

WBR:CWG:HEW:dyw
DJ 166-012-3
E2757

7 SEP 1982

Richard C. Grizzard, Esq.
Commonwealth's Attorney
Southampton County
P.O. Box 406
Courtland, Virginia 23837

Dear Mr. Grizzard:

This is in reference to your request that the Attorney General reconsider his June 21, 1982, objection under Section 5 of the Voting Rights Act of 1965, as amended, to the redistricting of Southampton County, Virginia. Your letter was received on July 9, 1982.

Pursuant to the reconsideration guidelines promulgated in the Procedures for the Administration of Section 5 (28 C.F.R. 51.47), we have reviewed the submitted information regarding the present district populations and the clarification of the present and proposed district lines. Accordingly the objection interposed to the redistricting is hereby withdrawn. However, we feel a responsibility to point out that Section 5 of the Voting Rights Act expressly provides that the failure of the Attorney General to object does not bar any subsequent judicial action to enjoin the enforcement of such change. See 28 C.F.R. 51.48.

Sincerely,

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

cc: Public File

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

15 NOV 1982

Mr. Charles A. Sabo
Chairman, Greensville County
Board of Superiors
P. O. Box 908
Emporia, Virginia 23847

Dear Mr. Sabo:

This is in reference to the ordinance which redistricts the election districts into two double-member districts; the ordinance which creates an at-large position on the board of supervisors; and the ordinance which realigns voting precincts and creates Voting Precinct 4B and the polling place therefor in Greensville County, Virginia. Your submission was completed on September 14, 1982.

We have made a careful analysis of the information you have provided. We have also considered comments and information provided by other interested parties. On the basis of our analysis, we are unable to conclude that the proposed plan for the redistricting of the election districts from single-member into two double-member districts and the creation of a fifth at-large position on the Board of Supervisors and the accompanying changes do not have a discriminatory purpose and effect.

Our review of this matter indicates that Greensville County is presently divided into four single-member districts. According to the 1980 Census, the total population in the County is 10,903 persons of whom 6,175 (56.6%) are black. Because the present plan was malapportioned (standard deviation of $\pm$ 39.6), the county in 1982 adopted the plan before us in review.

Our analysis reveals that, early in its redistricting process, the Board of Supervisors determined to retain the single-member districting system of election. Pursuant to the Board's instructions, the Board's redistricting consultant devised six single-member plans. Two additional single-member plans were submitted by an attorney from Virginia Legal Aid. We further note that the failure of the board to agree on any

of those plans apparently related, in part, to the racial composition and number of minority districts in Greensville County. This issue was apparently resolved by the adoption of the submitted multi-member district plan devised by Supervisor Wiley. This plan, coupled with the fifth at-large member, merges districts with politically active black voters with districts which are politically inactive, thereby reducing the electoral capability of black candidates. Under the present four single-member district plan, there is an opportunity for black voters to elect one and possibly two candidates of their choice. Under the proposed plan, however, there is a serious question of whether black voters will have an opportunity to elect more than one candidate of their choice to the five Supervisor positions. This is a clear retrogression of black voting strength that is prohibited by Beer v. United States, 425 U.S. 141 (1975).

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of proving that a submitted change has no discriminatory purpose or effect. See Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.39(e)). Under these circumstances, we are unable to conclude, as we must under to the Voting Rights Act, that the submitted plan coupled with the fifth member ordinance does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race. Accordingly, on behalf of the Attorney General, I must interpose an objection to the proposed redistricting plan, the fifth member ordinance and the accompanying changes.

Of course, as provided by Section 5 of the Voting Rights Act you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that these changes have neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color or membership in a language minority group. In addition, the Procedures for the Administration of Section 5 (28 C.F.R. 51.44) permit you to request the Attorney General to reconsider the objection. However, until the objection is withdrawn or the judgment from the District of Columbia Court is obtained, the effect of the objection by the Attorney General is to make the proposed redistricting of the election district, the proposed fifth member ordinance and the accompanying changes legally unenforceable. See also 28 C.F.R. 51.9.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action Greensville County plans to take with respect to this matter. If you have any questions concerning this letter, please feel free to call Sandra Coleman (202-724-6781), Deputy Director of the Section 5 Unit of the Voting Section.

Sincerely,

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

August 3, 1984

William J. Bridge, Esq.
Assistant Attorney General
Supreme Court Building
101 North Eighth Street
Richmond, Virginia 23219

Dear Mr. Bridge:

This refers to Chapter 775 of the Virginia Laws, 1984 Session, relating to assistance to voters, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your submission on June 4, 1984.

Chapter 775, which amends and reenacts §24.1-132 of the Code of Virginia and adds a new §24.1-228.2 to that Code, appears to have been enacted, at least in part, to bring the Commonwealth of Virginia into compliance with Section 208 of the Voting Rights Act, as amended, 42 U.S.C. 1973aa-6. Section 208 states:

> Any voter who requires assistance to vote by reason of blindness, disability, or inability to read or write may be given assistance by a person of the voter's choice, other than the voter's employer or agent of that employer or officer or agent of the voter's union.

Except for the prohibition on assistance by "the voter's employer or agent of that employer or officer or agent of the voter's union," Section 208 affords the voter entitled to receive assistance complete freedom to select whomever he or she wishes as an assistor. This provision was enacted by

Congress in large part to safeguard the right to vote of those who are unable to read and write well enough to cast their ballots without assistance, the predominant majority of whom are minorities whose rights are protected by other provisions of the Act.

Chapter 775, however, appears to go beyond the above provision of federal law by prohibiting an illiterate voter from receiving assistance from "a candidate for an office to be voted on at the election." It therefore adds an additional restriction not contained in Section 208 of the Voting Rights Act.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has no discriminatory purpose or effect. See Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.39(e)). In the administration of this provision, the Attorney General has taken the position that voting changes which are inconsistent with other provisions of the Voting Rights Act cannot be considered to have met the Section 5 standard for preclearance. Because Chapter 775, by excepting candidates as potential assistors for voters needing assistance, does not conform to the requirements of Section 208 of the Voting Rights Act, the Supremacy Clause of the United States Constitution legally prevents the Attorney General from approving it as a valid voting change under Section 5. Therefore, on behalf of the Attorney General, I must object to Chapter 775 of the 1984 Session of the General Assembly of Virginia.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that this change does, in fact, meet the preclearance requirements of Section 5. In addition, Section 51.44 of the guidelines permits you to request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the effect of the objection by the Attorney General is to make Chapter 775 legally unenforceable. 28 C.F.R. 51.9.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action the Commonwealth of Virginia plans to take with respect to this matter. If you have any questions, feel free to call Carl W. Gabel (202-724-8388), Director of the Section 5 Unit of the Voting Section.

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

MAR 1 1 1986

Carter Glass, IV, Esq.
Mays, Valentine, Davenport & Moore
Sovran Center
1111 East Main Street
Richmond, Virginia 23208

Dear Mr. Glass:

This refers to the three annexations (Phase I) to the City of Franklin, Virginia, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your submission on January 10, 1986. Although we noted your request to complete our evaluation by March 1, we have been unable to respond until this time.

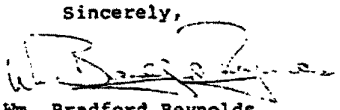
We have considered carefully the information you have provided, data obtained from the Census, and information provided by other interested parties. At the outset, we note that the proposed annexations will reduce the city's black population by 3.7 percentage points from 55.4 percent to 51.7 percent. More significantly, the city's voting age population would shift from a black majority (51.9%) to a white majority (51.7%). Under the city's at-large election system black candidates have had only limited success and our analysis of city elections involving black candidates suggests that a pattern of racial bloc voting exists. In these circumstances, the annexations would appear to perpetuate and enhance the existing restrictions on the ability of blacks to realize their voting potential. See City of Richmond v. United States 422 U.S. 358 (1975).

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has no discriminatory purpose or effect. See Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.39(e)). In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that that burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the voting changes occasioned by the three Phase I annexations.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that these changes have neither the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. In addition, Section 51.44 of the guidelines permits you to request that the Attorney General reconsider the objection. In this regard, we note the Supreme Court's observation in City of Richmond v. United States, supra, 422 U.S. at 378, that a dilution such as that involved here nevertheless may pass Section 5 muster "as long as the post-annexation electoral system fairly recognizes the minority's political potential." However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the effect of the objection by the Attorney General is to make the voting changes occasioned by the annexations legally unenforceable. 28 C.F.R. 51.9.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action the City of Franklin plans to take with respect to this matter. If you have any questions, feel free to call Steven H. Rosenbaum (202-724-8388), Attorney/Reviewer of the Section 5 Unit of the Voting Section.

Sincerely,



Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

May 18, 1987

Carter Glass IV, Esq.
Special Counsel
City of Franklin
P. O. Box 1122
Richmond, Virginia 23208

Dear Mr. Glass:

This refers to Chapter 64 (1987) which provides for an increase in the size of the city council from five to seven with six members elected from single-member districts and the mayor/councilmember elected at large, the method of filling a vacancy in the office of mayor/councilmember, a two-year term for the mayor/councilmember and an implementation schedule; and the March 23, 1987, ordinance which provides for a districting plan, six voting precincts, and four additional polling places for the City of Franklin, Virginia, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. This also refers to your request that the Attorney General reconsider the March 11, 1986, objection under Section 5 to three annexations to the City of Franklin. We received your submission and your request for reconsideration on March 30, 1987.

The Attorney General does not interpose any objections to the changes occasioned by Chapter 64 and the March 23, 1987, city ordinance. In addition, because the proposed method of election and districting plan afford minority citizens "representation reasonably equivalent to their political strength in the enlarged community," City of Richmond v. United States, 422 U.S. 358, 370 (1975), the objection interposed on March 11, 1986, to the city's three annexations is hereby withdrawn. However, we feel a responsibility to point out that Section 5

of the Voting Rights Act expressly provides that the failure of the Attorney General to object does not bar any subsequent judicial action to enjoin the enforcement of such changes. See Section 51.41 of the Procedures for the Administration of Section 5 (52 Fed. Reg. 496 (1987)).

Sincerely,

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

April 7, 1988

James M. Pates, Esq.
City Attorney
P. O. Box 7447
Fredericksburg, Virginia 22404

Dear Mr. Pates:

This refers to Chapter 664 (1968) which eliminates two city council positions, provides that the mayor is a voting member of the city council, alters the mayor's powers and duties (including the removal of the veto authority), amends the qualifications to serve as mayor, and changes the method of filling a vacancy in the office of mayor; and the 1987 reduction in the number of councilmembers to six with three councilmembers elected at large to concurrent terms and three elected from single-member districts, the districting plan, the procedures for conducting the May 10, 1988, special election, the three polling place changes, and the realignment of voting precincts in the City of Fredericksburg, Virginia, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received the information to complete your submission of the 1987 changes on February 16, 1988. On March 3, 1988, we received your related submission of Chapter 664 (1968) which was further supplemented on March 4, 1988. In accordance with your request, expedited consideration has been given this submission pursuant to the Procedures for the Administration of Section 5 (28 C.F.R. 51.34).

We have considered carefully the information you provided, as well as comments and information provided by other interested parties. The Attorney General does not interpose any objections to the changes occasioned by Chapter 664. However, we feel a responsibility to point out that Section 5 of the Voting Rights Act expressly provides that the failure of the Attorney General to object does not bar any subsequent judicial action to enjoin the enforcement of such changes. In addition, as authorized by Section 5, the Attorney General reserves the right to reexamine this submission if additional information that would otherwise require an objection comes to his attention during the remainder of the sixty-day review period. See also 28 C.F.R. 51.41 and 51.43.

With respect to the 1987 changes (involving the further reduction in the number of councilmembers and the proposed 3-3 method of election and districting plan for implementing that reduction) we have come to a different conclusion. There appears to be no racial animus implicated in those changes and we perceive nothing in the reduction in the size of the council which per se offends the Voting Rights Act. Even so, in making a reduction of this sort, it is incumbent upon the city to assure that any loss of voting opportunities previously available to black citizens is adequately offset by the method of election to be utilized in selecting the new council. This the 3-3 plan of election does not do.

Under the 3-3 election system, the opportunity for black voters to elect a representative of their choice to an at-large position through the use of single-shot voting would be severely limited because of the reduced number of seats to be filled at large. Similarly, minorities would appear to have even less opportunity than before to meaningfully participate in the election of a representative from one of the three single-member districts as they are currently drawn. Thus, the 3-3 election system in this instance would, in our view, "lead to a retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise." Beer v. United States, 425 U.S. 130, 141 (1976).

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has no discriminatory purpose or effect. See Georgia v. United States, 411 U.S. 526 (1973); see also 28 C.F.R. 51.52. In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that that burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the 1987 reduction in the size of the city council in the context of the 3-3 method of election adopted for electing the council as so reduced. It should be noted, however, that nothing contained in the objection interposed today should be taken as precluding the reduction in council size should that reduction be accompanied by a method of election that allows black citizens an equal opportunity to participate in the political process and elect candidates of their choice to office on the reduced council.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that these changes have neither the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. In addition, Section 51.45 of the guidelines permits you to request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the

District of Columbia Court is obtained, the effect of the objection by the Attorney General is to make the 1987 reduction in the size of the city council, in the context of the proposed 3-3 system, legally unenforceable. 28 C.F.R. 51.10.

The Attorney General will make no determination regarding the May 10, 1988, special election procedures (which would implement the reduction and change in election method), the realignment of voting precincts, and the polling place changes. The special election and precinct realignment are dependent upon the changes to which an objection has been here interposed, and you have requested withdrawal of the polling place changes. See also 28 C.F.R. 51.25 and 51.35.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action the City of Fredericksburg plans to take with respect to this matter. If you have any questions, feel free to call Mark A. Posner (202-724-8388), Deputy Director of the Section 5 Unit of the Voting Section.

Sincerely,

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

Civil Rights Division

Office of the Assistant Attorney General Washington, D.C. 20530

July 24, 1989

Michael A. Korb, Jr., Esq.
Assistant City Attorney
2400 Washington Avenue
Newport News, Virginia 23607

Dear Mr. Korb:

This refers to the change in the method of nominating Democratic Party candidates for the city council from primary elections to nominating conventions; Chapter 448 (1968) which provides for staggered terms for electing the city council; and Chapter 631 (1988) which provides for the direct election of the mayor with a four-year term of office, the procedure for filling a mayoral vacancy, a change in the method for staggering city council terms, and a change to nonpartisan elections for the City of Newport News, Virginia, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received the information to complete your submissions on May 23, 1989.

We have considered carefully the information you have provided, as well as information provided by other interested parties. In that regard, the Attorney General does not interpose any objections to the change in the method of nominating Democratic Party candidates, the adoption of staggered terms, and the change to nonpartisan elections. However, we feel a responsibility to point out that Section 5 of the Voting Rights Act expressly provides that the failure of the Attorney General to object does not bar any subsequent judicial action to enjoin the enforcement of these changes. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41).

However, we are unable to reach a similar conclusion with respect to the change in the method of staggering councilmanic terms occasioned by the 1988 charter amendment. This change is a byproduct of the change to a directly elected mayor since, in the amended election system, the mayor will remain as the seventh

member of the council but will be elected in a separate election contest. The election system will change from four regular councilmembers elected at large as a group in one election year and three in the following election year to three elected at large as a group in each election.

In reviewing this change, our analysis indicates an apparent pattern of racially polarized voting in city elections. Though this circumstance, in the context of at-large elections, has a strong tendency to minimize the opportunity of black voters to elect candidates of their choice to office, it appears that several features of the current election system serve to moderate that result, including the use of a plurality vote requirement and the fact that councilmembers are elected as a group without the use of numbered positions or residency districts. Nevertheless, aside from the consistent election of one particular black candidate, the election results indicate that black voters have had only limited success in electing candidates of their choice to office.

In that regard, the two additional blacks who recently gained seats on the city council were elected by only very narrow margins. One finished third when three positions were open and the other finished fourth when four positions were chosen, and both finished ahead of the candidate who placed next below them by relatively few votes. We also note that on several occasions a black candidate finished fourth but was defeated because just three seats were selected in that election year. These circumstances, taken as a whole, indicate that the change from a 4-3 to a 3-3 stagger would diminish the electoral opportunity provided black voters and thus "would lead to a retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise." Beer v. United States, 425 U.S. 130, 141 (1976).

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. See Georgia v. United States, 411 U.S. 526 (1973); see also 28 C.F.R. 51.52(a). In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that your burden has been sustained in this instance. Therefore,

on behalf of the Attorney General, I must object to the change from a 4-3 to a 3-3 method of staggering council elections. With respect to the remaining changes occasioned by Chapter 631 (1988), no determination will be made since they are directly related to the objectionable change.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that these changes have neither the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. In addition, Section 51.45 of the guidelines permits you to request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the effect of the objection by the Attorney General is to make the change in the method of staggering elections legally unenforceable. 28 C.F.R. 51.10.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action the City of Newport News plans to take with respect to this matter. If you have any questions, feel free to call Mark A. Posner (202-724-8388), an attorney in the Voting Section.

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

FEB 20 1990

Michael A. Korb, Jr., Esq.
Assistant City Attorney
2400 Washington Avenue
Newport News, Virginia 23607

Dear Mr. Korb:

This refers to your request that the Attorney General reconsider the July 24, 1989, objection under Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c, to the change in the method of staggering city council terms for the City of Newport News, Virginia. In addition, we note that there are certain other changes, submitted in conjunction with the staggered terms change, to which the Attorney General was unable to make a determination because they are directly related to the objected-to change, i.e., the direct election of the mayor with a four-year term of office, and the procedure for filling mayoral vacancies. We received your request on November 17, 1989; supplemental information was received November 27, December 14, and December 15, 1989.

We have carefully considered the information you have provided, as well as comments and information provided by other interested parties. As explained in our letter of July 24, 1989, an objection was interposed under Section 5 because the city had not carried its burden of showing that the change from a 4-3 to a 3-3 stagger would not lead to a retrogression in the electoral opportunity of black voters. Our analysis indicated that the loss of the fourth seat would be retrogressive in the context of an at-large election system characterized by racially polarized voting and limited black voter success in electing candidates of their choice to office. In that regard, we particularly focused on the extent to which black candidates have been elected as our review of the election returns indicated that black candidates have been the primary candidates of choice among black voters.

In the reconsideration request, the city contends that we erred in focusing upon the success of black candidates as there have been white candidates elected for whom more than 50 percent of

the black voters have cast one of their available votes. According to the city, these candidates also should be considered "candidates of choice" of black voters and, when viewed from this perspective, there is no difference in black electoral opportunity when three or four seats are open for election.

In the context of challenges brought under Section 2 of the Voting Rights Act, 42 U.S.C. 1973, courts have held that great care must be taken when determining which candidates should be considered "candidates of choice" of minority voters. This is to ensure that the Act is not interpreted to penalize minority voters for exercising their right to utilize votes afforded them by the electoral system when there are fewer "candidates of choice" than votes available but they nevertheless decide to cast a vote for a secondary choice. Thus, in reviewing the electoral success enjoyed by minority voters, it generally is appropriate to discount contests in which no minority candidate participated, especially if minority voter turnout declined in those elections indicating a lower level of interest in the candidates. Campos v. City of Baytown, 840 F.2d 1240, 1245 (5th Cir. 1988); Citizens for a Better Gretna v. City of Gretna, 834 F.2d 496, 503-04 (5th Cir. 1987). In addition, in at-large interracial contests for multiple seats where voters may cast several votes among a group of candidates, if both black and white candidates receive more than 50 percent of the minority vote, it is essential to compare the nature and extent of the support given to the minority and white candidates. Collins v. City of Norfolk, 816 F.2d 932 (4th Cir. 1987) (Collins IV); Collins v. City of Norfolk, 883 F.2d 1232 (4th Cir. 1989) (Collins V).

In Newport News, our reconsideration of the election results confirms that, except perhaps for one white candidate elected in 1980, the other elected white candidates who received majority black voter support may not properly be considered "candidates of choice" of the black voters. The white candidates identified by the city who were elected in 1972 and in the 1976 special election with black voter support ran in contests in which no black candidate participated and which exhibited abnormally low black voter turnout. With respect to those white candidates elected in 1982, 1986, and 1988 with black support, they all received significantly fewer votes among black voters than the black candidates running in the same elections. We also note that our conclusions in these regards are consistent with the information we have received from representatives of the black community about the electoral preferences of black voters in Newport News.

Thus, our analysis continues to indicate that the city has not satisfied its burden under Section 5 of showing that the proposed change lacks a prohibited retrogressive effect. See Beer v. United States, 425 U.S. 130, 141 (1976); Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.52). Accordingly, on behalf of the Attorney General, I must decline to withdraw the objection to the change in staggered terms for the Newport News City Council. In addition, we continue to be unable to make a determination on the related voting changes set forth above.

Of course, as we previously have advised, Section 5 permits you to seek a declaratory judgment from the United States District Court for the District of Columbia that the change in the method of staggering terms has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. However, unless the objection is withdrawn or a judgment from the District of Columbia Court is obtained, this change (and the related changes which have not been precleared) continue to be unenforceable. See also 28 C.F.R. 51.10.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action the City of Newport News plans to take with respect to this matter. If you have any questions, feel free to call Mark A. Posner (202-724-8388), an attorney in the Voting Section.

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

JUL 16 1991

K. Marshall Cook, Esq.
Deputy Attorney General
101 North Eighth Street
Richmond, Virginia 23219

Dear Mr. Cook:

This refers to Chapters 11, H.B. No. 3001, and 16, H.B. No. 3012 (1991), which redistrict the Virginia House of Delegates, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your initial submission on May 17, 1991; supplemental information was received on June 27 and July 1, 8, 11, and 15, 1991.

We have carefully considered the information you have provided, as well as Census data and information and comments from other interested persons. At the outset, we would note that as it applies to the redistricting process, the Voting Rights Act requires the Attorney General to determine whether the submitting authority has sustained its burden of showing that each of the legislative choices made under a proposed plan is free of racially discriminatory purpose or retrogressive effect and, if so, whether the plan will result in a clear violation of Section 2 of the Act. In the case of a statewide redistricting such as the instant one, this examination requires us not only to review the overall impact of the plan on minority voters, but also to understand the reasons for and the impact of each of the legislative choices that were made in arriving at this particular plan.

In making these judgments, we apply the legal rules and precedents established by the federal courts and our published administrative guidelines. See, e.g., 28 C.F.R. 51.52 (a), 51.55, 51.56. For example, we cannot preclear those portions of a plan where the legislature has deferred to the interests of incumbents while refusing to accommodate the community of

interest shared by insular minorities. See, e.g., Garza v. County of Los Angeles, 918 F.2d 763, 771 (9th Cir. 1990), cert. denied, 111 S. Ct. 681 (1991); Ketchum v. Byrne, 740 F.2d 1398, 1408-09 (7th Cir. 1984), cert. denied, 471 U.S. 1135 (1985). We endeavor to evaluate these issues in the context of the demographic changes which compelled the particular jurisdiction's need to redistrict (id.). Finally, our entire review is guided by the principle that the Act insures fair election opportunities and does not require that any jurisdiction attempt to guarantee racial or ethnic proportional results.

Turning now to the instant submission, we have examined the 1991 House redistricting choices in light of the element of racially polarized voting that appears to characterize at least some elections in the state. For the most part, our analysis shows that the Virginia House redistricting plan meets Section 5 preclearance requirements. In one area, however, the proposed configuration of district boundary lines appears to have been drawn in such a way as to minimize black voting strength. Specifically, we refer to the considerable concentration of black population in Charles City County where approximately 4000 blacks are submerged in a majority white district. We are aware that the Legislature rejected available alternatives that would have recognized this concentration of voters by drawing them into a district with black voters in the Richmond area that likely would result in an additional district which provides black voters an equal opportunity to participate in the political process and to elect candidates of their choice to office. While we have noted the state's explanation that the submitted districting in this area was designed to protect certain incumbents, and even though incumbency protection is not in and of itself an inappropriate consideration, it may not be accomplished at the expense of minority voting potential. Garza v. County of Los Angeles, 918 F.2d at 771; Ketchum v. Byrne, 740 F.2d at 1408-09.

Therefore, in light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that the state's burden has been sustained in this instance. Accordingly, on behalf of the Attorney General, I must object to the 1991 redistricting plan for the State House of Delegates, with regard to the manner in which it treats the Charles City County, James City County and Richmond/Henrico County area discussed above.

We note that under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed 1991 House redistricting plan has neither the purpose nor will have the effect of denying or abridging the right to vote on account of

race or color. In addition, you may request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the 1991 redistricting plan for the House of Representatives continues to be legally unenforceable. Clark v. Roemer, 59 U.S.L.W. 4583 (U.S. June 3, 1991); 28 C.F.R. 51.10 and 51.45.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the State of Virginia plans to take concerning this matter. In this regard the Department stands ready to review quickly any plan the legislature might adopt to remedy this objection. If you have any questions, you should call Sandra S. Coleman (202-307-3718), Deputy Chief for Section 5.

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

NOV 12 1991

James N. Hopper, Esq.
Parvin, Wilson, Barnett & Hopper
P. O. Box 1201
Richmond, Virginia 23209

Dear Mr. Hopper:

This refers to the redistricting of supervisor districts and the precinct realignment in Powhatan County, Virginia, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your response to our August 26, 1991, request for additional information on September 10, 1991.

We have given careful consideration to the materials you have submitted, as well as to information and comments from other interested parties. We note at the outset that according to the 1990 Census, 21.4 percent of the population of Powhatan County is black, yet no black person has ever been elected as county supervisor. The county's black population is concentrated in the northwestern portion of the county in such a way that readily available alternatives would allow black voters an opportunity to elect candidates of their choice in one of the five supervisor districts, but this result seems to have been avoided through the division of the county's black population between Districts 3 and 5. While District 3 of the proposed plan ostensibly has a black majority in total population, the black proportion of this district is only 38 percent when the non-voting population of the Powhatan Correctional Center is excluded.

During the redistricting process, the county appears to have been aware of the interest on the part of black citizens to have their voting potential better recognized, especially by creating a district that combines the black population in the northern portion of the county in one district. While we have noted the several reasons advanced by the county for rejecting this approach, our analysis suggests that the county's actions may have been motivated, in large part, by the desire to maintain districts conducive to the re-election of the incumbent supervisors, all of whom are white. While we recognize that the

cc: Public File

desire to protect incumbents may not in and of itself be an inappropriate consideration, it may not be accomplished at the expense of minority voting potential. Garza v. Los Angeles County, 918 F.2d 763, 771 (9th Cir. 1990), cert. denied, 111 S. Ct. 681 (1991); Ketchum v. Byrne, 740 F.2d 1398, 1408-09, (7th Cir. 1984), cert. denied, 471 U.S. 1135 (1985).

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. See Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.52). In view of the concerns noted above, however, I am unable to conclude, as I must under the Act, that the county has carried its burden with regard to the submitted changes. Accordingly I must, on behalf of the Attorney General, interpose an objection to the proposed redistricting plan for supervisors in Powhatan County.

We note that under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed changes have neither the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. In addition, you may request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the redistricting plan for the supervisor districts continues to be legally unenforceable. Clark v. Roemer, 59 U.S.L.A. 4583 (U.S. June 3, 1991); 28 C.F.R. 51.10 and 51.45.

With respect to the realignment of voting precincts, the Attorney General will make no determination at this time since it is directly related to the objected-to change. 28 C.F.R. 51.22(b) and 51.35.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action Powhatan County plans to take concerning this matter. If you have any questions, you should call Richard B. Jerome (202-514-8696), an attorney in the Voting Section.

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

February 16, 1993

Verbena M. Askew, Esq.
City Attorney
2400 Washington Avenue
Newport News, Virginia 23607

Dear Ms. Askew:

This refers to the change in the method of selection of school board members from appointed to elected, the adoption of an at-large method of election, and the method of staggering terms for the Newport News School District in Virginia, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your responses to our October 23, 1992, request for additional information on December 16 and 17, 1992, January 4 and February 2 and 5, 1993.

We have considered carefully the information you have provided, as well as Census data and information received from other interested parties. The Attorney General does not interpose any objection to the change to an elected school board. However, we note that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the change. In addition, as authorized by Section 5, we reserve the right to reexamine this change if additional information that would otherwise require an objection comes to our attention during the remainder of the sixty-day review period. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41 and 51.43).

We are unable to reach the same conclusion with regard to the city council's decision to use an at-large method of electing the school board. The voting changes now before us are the product of Chapter 594 (1992) (codified at Va. Code Ann. §§ 22.1-57.1 to 22.1-57.5). Last year, when we granted Section 5 preclearance to the voting changes in this enabling legislation, we informed the state that each local change to an elected school

board, as well as the method of election, would require separate preclearance. See 28 C.F.R. 51.15. Under the terms of Chapter 594, the decision to change to an elected board is made directly by the electorate in a process initiated by the presentation of petitions and completed by approval at a referendum. Decisions regarding the method of electing the school board, however, are left to the local governing body, in this case the city council.

According to the 1990 Census, black persons comprise 33 percent of the city's population and 31 percent of its voting age population. Under the existing appointment system for the school board, the city council, since 1982, has consistently appointed two black persons to serve on the seven-member school board. Under the proposed election system, school board members would be elected using the same at-large system as the city council.

In 1989, we had occasion to review voting patterns in city council elections in the context of the city's Section 5 submission of a change in method of staggering city councilmembers' terms resulting from the proposed direct election of the mayor. In our July 24, 1989, letter interposing an objection to this change, we noted that there was "an apparent pattern of racially polarized voting in city elections" and that "black voters have had only limited success in electing candidates of their choice to office." Our review of recent election returns reveals that this pattern has intensified since 1989, as the minority community largely has been unsuccessful in electing candidates of choice to the city council under the existing at-large system. Indeed, although black voters overwhelmingly supported black candidates for city council, no black candidates were elected in 1988 and 1990, and only one black candidate was successful in 1992.

It was against this backdrop that the city, prior to the referendum vote on an elected school board, made its decision to submit for preclearance an at-large method of election. This decision was reached without the benefit of public hearings, consideration of alternative electoral systems, or input from the minority community. While the city council reassessed its initial decision on December 8, 1992, it did so only during an executive session, which was closed to the public and not recorded.

Despite the lack of opportunity for minority input, we understand that the council heard the views of its sole black member, urging the adoption of a single-member district method of electing the school board as a necessary step to achieving a racially fair system in which minority voters would have an equal opportunity to elect candidates of their choice. Nevertheless, at the close of the meeting the council decided to continue to seek preclearance for the at-large system, without any further consideration of alternative election methods.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. See Georgia v. United States, 411 U.S. 526 (1973); see also 28 C.F.R. 51.52. In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that your burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the adoption of an at-large method of electing school board members.

We note that under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed change has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. In addition, you may request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the at-large method of electing the school board continues to be legally unenforceable. Clark v. Roemer, 111 S. Ct. 2096 (1991); 28 C.F.R. 51.10 and 51.45.

Because the method of staggering terms is directly related to the proposed at-large method of election, the Attorney General will make no determination with regard to this change. See 28 C.F.R. 51.22.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action Newport News plans to take concerning this matter. If you have any questions, you should call George Schneider (202-307-3153), an attorney in the Voting Section.

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

June 20, 1994

Martin M. McMahon, Esq.
Assistant City Attorney
P. O. Box 15225
Chesapeake, Virginia 23328-5225

Dear Mr. McMahon:

This refers to the adoption of the at-large method of election for the board of education in the City of Chesapeake, Virginia, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your responses to our request for additional information on March 3 and April 19, 1994; other supplemental information was received on May 13 and 23, 1994.

We have considered carefully the information you have provided, as well as information from other interested persons. According to the 1990 Census, Chesapeake has total population of 151,976, of whom 27.2 percent are black. In addition, black residents comprise 25.6 percent of the city's voting age population. The city proposes to elect the city school board at large. It will be composed of nine members, serving four-year, staggered terms. Candidates will not run for designated posts and will be voted on in nonpartisan, plurality-win elections. The current school board, appointed by the city council, has three black members.

In November 1993, immediately following a successful referendum vote approving a change from an appointed to an elected school board, the city council held two public meetings to discuss whether to adopt an at-large or a district method of election. Under the state enabling statute (Chapter 594 (1992)), the council was invested with the authority to make this decision.

It is our understanding that under the previous appointment system, the council had followed the informal practice of appointing school board members using residency districts. Chapter 594 provides that where school board appointments were made by district, the school board also should be elected in that manner, however, since the city's appointment system at least in formal terms was at large, the city apparently considered itself free to adopt an at-large election system. In this regard, the council was presented with a number of illustrative districting plans by a local demographer, including a nine-district plan with two districts with black voting age population majorities and a third district that was 47 percent black in voting age population.

The two black members of the city council urged that additional time be taken to consider this important issue. Several members of the black community supported the at-large option, but generally also urged that additional study be undertaken. The council, however, proceeded to adopt the submitted at-large method at the second November meeting, with the two black councilmembers voting against that method.

Our analysis of city elections raises significant concern as to whether the at-large method of election will allow black voters an equal opportunity to elect their candidates of choice to the school board. Since the proposed school board election method would be almost identical to the method by which the city council is elected, we have carefully examined voting patterns in past city council elections. Our analysis reveals persistent and severe polarization along racial lines. Over the past decade, it appears that in each election one or more black candidates have been the leading candidates of choice among black voters while these candidates generally have not finished among the group of candidates white voters favored for election to the council. A number of black candidates have been elected nonetheless, generally by receiving very strong support from black voters and a modicum of support among whites. This opportunity of black voters to elect some of their preferred candidates is fairly tenuous, however, as was demonstrated in the 1994 election when the black candidate that appears to have received nearly unanimous black support received almost no votes among white voters and thus was defeated.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. See Georgia v. United States, 411 U.S. 526 (1973); see also 28 C.F.R. 51.52. In addition, an objection must be interposed where

there is a "clear" violation of Section 2 of the Act, 42 U.S.C. 1973. 28 C.F.R. 51.55(b)(2). In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that the City's burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the at-large method of electing the Chesapeake board of education.

We note that under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the at-large election method will have neither the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. In addition, you may request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the at-large election method continues to be legally unenforceable. Clark v. Roemer, 500 U.S. 646 (1991); 28 C.F.R. 51.10 and 51.45.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the City of Chesapeake plans to take concerning this matter. If you have any questions, you should call Mark A. Posner (202-307-1388), Special Section 5 Counsel in the Voting Section.

Sincerely,

Gerald W. Jones
Acting Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

October 27, 1999

Benjamin W. Emerson, Esq.
Sands Anderson Marks & Miller
P.O. Box 1998
Richmond, Virginia 23218-1998

Dear Mr. Emerson:

This refers to the polling place change in the Darvills Precinct (No. 101) for Dinwiddie County, Virginia, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your responses to our September 28, 1999, request for additional information on October 1 and 4, 1999; supplemental information was received on October 14, 1999.

We have considered carefully the information you have provided, as well as data from the United States Census, information in the county's prior Section 5 submissions, and information and comments from county officials and other interested persons.

The Darvills Precinct, which is located in Supervisor District 1, extends approximately 12 miles from the community of Darvills on the west to the community of DeWitt on the east. The precinct is heavily rural, containing no incorporated towns or public schools. Until 1998, voting in this precinct took place at the Darvills Community Center located on the western edge of the precinct. We understand that the Darvills Community Center, although available upon rental to the public, was not commonly utilized by black persons. The Darvills Community Center was destroyed by fire, and the Dinwiddie County Electoral Board, after surveying alternative locations, recommended that the Dinwiddie County Board of Supervisors designate the Cut Bank Hunt Club ("Hunt Club") as the new polling place for the precinct. The board of supervisors adopted the recommendation, and the Hunt Club was used in the November 3, 1998, election. The Hunt Club is a privately owned hunting club with a predominantly black membership. Prior to the election the Hunt Club installed a ramp to provide access for persons with disabilities and put gravel on the road leading to the polling place. We understand that for

the November 2, 1999, election, the Hunt Club plans to further improve the road leading to the polling place, install additional lighting, and secure liability insurance.

Seven months after the 1998 election a petition containing 105 signatures was presented to the board of supervisors and the electoral board requesting a change in the Darvills Precinct polling place from the Hunt Club to Mansons United Methodist Church ("Mansons Church") located approximately 3 miles southeast of the Hunt Club. The petition stated the desire of the signers that the polling place be "more centrally located." It also noted that Mansons Church had agreed to serve as the polling place and described it as "well lighted, good parking, [and] handicap accessable [sic]." The overwhelming number of signatures on the petition were of white residents from the communities of DeWitt and Rocky Run, located on the eastern side of the precinct. It appears that only three black persons signed the petition. We also understand, based on information from the general registrar, that 23 of the people who signed the petition were not registered in the Darvills Precinct, and only 18 of the 105 signatures were of persons who had voted at the Hunt Club in the 1998 election.

Following discussion of the petition, the board of supervisors scheduled a hearing to consider changing the polling place to Mansons Church. Just prior to that hearing, however, Mansons Church informed the board of supervisors that it was withdrawing its offer to serve as a polling place. At the hearing, the board of supervisors authorized the placement of an advertisement for a public hearing on changing the Darvills polling place "if a suitable centrally located location can be found prior to July 15, 1999." On July 12, 1999, Bott Memorial Presbyterian Church ("Bott Church") offered its building for use as a polling place. Bott Church is located at the extreme eastern end of the Darvills Precinct and has an overwhelmingly white congregation. At a hearing on August 4, 1999, the board of supervisors adopted a resolution changing the polling place for the Darvills Precinct to Bott Church.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.52).

In connection with our consideration of whether the proposed change will have a retrogressive effect on minority voters in the Darvills Precinct, we have examined Census data for the area of the county within the boundaries of the precinct and have sought information from county officials and others regarding the distribution of minority residents within the precinct. The 1990

Census data indicates that a significant majority of black precinct residents live in the western portion of the precinct. While the 1990 data show some black population in the eastern part of the precinct, our research suggests that it has been significantly reduced since that time. Although we have had no difficulty in contacting minority persons in the western portion of the precinct, we have experienced serious difficulty in contacting minority residents in the eastern portion of the precinct, despite significant effort on our part. Neither county officials, nor minority residents in the western portion of the precinct have been able to provide us with reliable information regarding names or telephone numbers of minority citizens in the eastern portion of the precinct. Thus, because our most reliable information is that the black population is heavily concentrated in the western part of the precinct, it appears that the proposed polling place change will impose a significantly greater hardship on minority voters than white voters. The county has provided no information that would show that the polling place move will not have this disparate impact.

The standards for determining whether government action is motivated by a discriminatory purpose were established by the Supreme Court in Village of Arlington Heights v. Metropolitan Housing Development Corp., 429 U.S. 252, 266-68 (1977). The Court directed that consideration be given, in particular, to whether the official action "bears more heavily on one race than another"; the "historical background of the [jurisdiction's] decision"; the "specific sequence of events leading up to the challenged decision"; "[d]epartures from the normal procedural sequence" and "substantive departures"; and "[t]he legislative or administrative history," especially "contemporary statements by members of the decisionmaking body."

We have already discussed how the proposed polling place change bears more heavily on blacks than whites. The historical background reveals that for many years, voters in the Darvills precinct voted at the Community Center, located in the western part of the precinct. When that location was destroyed by fire the county electoral board recommended that the Hunt Club be selected, and the board of supervisors agreed. The sequence of events leading up to the decision to change the polling place to Bott Church tends to show a discriminatory purpose. The decision was made after the Darvills polling place was changed to a location operated by black persons, and after submission of a petition seeking a change that was signed almost exclusively by white citizens. Moreover, the Bott Church's congregation is almost exclusively white. Procedural and substantive departures from the normal practice also tend to show a discriminatory purpose. The board of supervisors discounted the recommendation of the electoral board to retain the Hunt Club and, substantively, the desire for a central location, articulated by

both the county and the petitioners as the preeminent criterion, was immediately abandoned when the Bott Church site became available.

We have also considered other alleged deficiencies in the Hunt Club that have been asserted by county officials or private individuals and have found them to be insubstantial.

In light of the considerations discussed above, I cannot conclude that your burden to show that the proposed change has neither a discriminatory purpose nor will have a discriminatory effect has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the change in the polling place from the Cut Bank Hunt Club to the Bott Memorial Presbyterian Church.

We note that under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed change neither has the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. See 28 C.F.R. 51.44. In addition, you may request that the Attorney General reconsider the objection. See 28 C.F.R. 51.45. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the polling place change continues to be legally unenforceable. Clark v. Roemer, 500 U.S. 646 (1991); 28 C.F.R. 51.10.

Our determination in this matter in no way reflects any conclusion that Dinwiddie County may not properly consider convenience to voters as a valid criterion for designating polling places. Our concerns are that such decisions be made in a way that does not disadvantage or intentionally discriminate against minority voters. Realigning or subdividing existing precincts or establishing additional precincts and polling places may well provide options for the county to achieve voter convenience while avoiding disadvantaging minority voters. There may be additional options as well.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action Dinwiddie County plans to take concerning this matter. If you have any questions, you should call George Schneider (202-307-3153), Special Section 5 Counsel in the Voting Section.

Sincerely,

Bill Lann Lee
Acting Assistant
Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

SEP 28 2001

Bruce D. Jones, Jr., Esq.
County Attorney
P.O. Box 690
Eastville, Virginia 23347-0690

Dear Mr. Jones:

This refers to the change in the method of electing the board of supervisors from six single-member districts to three double-member districts; the 2001 redistricting plan for the board of supervisors; the realignment of voting precincts; and the polling place change for Northampton County, Virginia, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your responses to our July 18, 2001, request for additional information on July 30, 31, and August 2, 2001.

The Attorney General does not interpose any objection to the polling place change. However, we note that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the change. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41).

With regard to the remaining specified changes, we have considered carefully the information provided, as well as information in our files, Census data, and comments from other interested persons. According to the 2000 Census, Northampton County has a population of 13,093, of whom 43.1 percent are black, and 3.5 percent are Hispanic. Since 1990, it appears that the county's overall population increased by 32 persons.

Our analysis of the county's electoral history indicates that under the current method of election, which utilizes six single-member districts, black voters have been able to elect candidates of their choice to office in three districts. According to the 2000 Census, Districts 1, 3, and 6 are majority-minority in total and voting age populations. We note that the county changed its method of election from three double-member districts to six single-member districts in 1991, in response to concerns that the three double-member districts diluted the black vote in the county. Since 1991, black supervisors have been elected in all three of the majority-minority districts, and currently represent two districts.

The proposed redistricting plan contains no districts in which minorities constitute a majority of the voting age population. One district has a total minority population of 51.9 percent and a minority voting age population of 48.8 percent. The other two districts have minority voting age populations of 39.3 percent and 43.5 percent. The county maintains that the change to the three-district system was adopted in order to facilitate the inclusion of incorporated towns within single election districts and to make access to polling places more convenient to voters. According to the submission, the county determined that it was not feasible to maintain six districts and to include towns with recent annexations wholly within single districts.

However, our analysis does not support the county's position that maintaining six districts was not feasible. As provided for in the Department's Guidance Concerning Redistricting and Retrogression Under Section 5 of the Voting Rights Act, 66 Fed. Reg. 5412, at 5413, (Jan. 18, 2001), we developed an illustrative six-district plan as part of our review of the county's submission. The plan is not significantly different from the existing benchmark plan. Under the illustrative plan, each town is wholly contained within a single district, the county's redistricting criteria are substantially met, and the one-person/one-vote requirement is satisfied.

Our analysis further reveals that the county failed to seriously consider any alternative plans that would not violate the non-retrogression requirement of Section 5. It appears that the county gave little or no serious consideration to the impact on the ability of minority voters to elect candidates of their choice, when it replaced a plan in which minorities constitute voting age majorities in three districts with a plan under which minorities of voting age do not constitute a voting age majority in any district. For reasons not fully explained, a six-district plan that had been prepared by the county was never completed.

The county maintains that the proposed plan is not retrogressive with regard to minority representation because there are currently two minority supervisors on the board, and that there were two on the board prior to the 1991 redistricting plan. This position misstates the standard that the county must meet under Section 5. Under the last precleared benchmark plan, against which the proposed plan must be measured, there are three districts, not two, in which minorities constitute a majority of the total and voting age populations, with a history of electing candidates preferred by minority voters in each of the three districts.

The county suggests that the minority community, with the use of single-shot voting, could still elect three candidates of choice under the proposed plan. Our analysis, however, does not indicate that minority voters will continue to have the same opportunity under the proposed plan that they currently have to elect even two candidates of choice. In our view, the available information concerning voting patterns within the county suggests the presence of racially polarized voting. An examination of the populations of the proposed districts indicates that it is unlikely that the minority community would be able to elect two, much less, three candidates of choice.

Given the demographics of the county and apparent voting patterns within it, the jurisdiction has not carried its burden to show that the proposed change in the method of election and the redistricting plan will not significantly reduce the ability of minority voters to elect candidates of their choice to the board of supervisors.

Under these circumstances, I am unable to conclude as I must under Section 5, that the county has met its burden of demonstrating that the submitted changes have neither a discriminatory purpose nor a discriminatory effect. Georgia v. United States, 411 U.S. 526 (1973); see also 28 C.F.R 51.52. Therefore, on behalf of the Attorney General, I must object to the change in the method of electing the board of supervisors from six single-member districts to three double-member districts and the 2001 redistricting plan for the board of supervisors of Northampton County.

We note that under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed changes neither have the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. See 28 C.F.R. 51.44. In addition, you may request that the Attorney General reconsider the objection. See 28 C.F.R. 51.45. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the submitted plan continues to be legally unenforceable. Clark v. Roemer, 500 U.S. 646 (1991); 28 C.F.R. 51.10.

The Attorney General will make no determination regarding the submitted realignment of voting precincts because it is dependant upon the objected to change in the method of election and the redistricting plan.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action Northampton County plans to take concerning this matter. If you have any questions, you should call Mr. Robert P. Lowell (202-514-3539), an attorney in the Voting Section.

Sincerely,

Ralph F. Boyd, Jr.
Assistant Attorney General
Civil Rights Division

U.S. Department Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

APR 29 2002

Mr. William D. Sleeper
County Administrator
Mr. Fred M. Ingram
Chairperson, Board of Supervisors
P.O. Box 426
Pittsylvania, Virginia 24531

Dear Mr. Sleeper and Mr. Ingram:

This refers to the 2001 redistricting plan for the board of supervisors and school board for Pittsylvania County, Virginia, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your responses to our September 14, 2001, request for additional information on February 26, 2002, and supplemental information through March 12, 2002. We have considered carefully the information you have provided, as well as census data, comments and information from other interested parties, and other information, including the county's previous submissions. Based on our analysis of the information available to us, I am compelled to object to the submitted redistricting plans on behalf of the Attorney General.

The 2000 Census indicates that Pittsylvania County has a population of 61,745, of whom 23.7 percent are black. The county's board of supervisors consists of a total of seven members elected from single member districts to serve four-year, concurrent terms. The county school board is coterminous with the county board of supervisor districts.

According to census data, under the redistricting plan currently in effect, the benchmark plan, there is one district, the Bannister District, in which black persons are a majority of the population. That district has a total black population of 51.3 percent and a black voting age population of 50.2 percent. Since 1991 black voters have had the ability to elect their candidate of choice in this district. The county is proposing a plan, which will reduce the black population in the district to below 50 percent black.

While the reduction in black population in the Banister District is relatively small, a variety of factors preclude the county from establishing, as it must under Section 5 of the Voting Rights Act, that the adoption of this plan is free from either discriminatory effect or purpose.

First, the impact of this reduction is retrogressive. Our analysis of county elections shows that the level of racial polarization is extreme, such that any reduction whatsoever would call into question the continued ability of black voters to elect their candidate of choice. Based on the high level of vote polarization in the county, dropping the percentage of the Banister District below 50 percent black is very likely to severely limit the ability black voters have had throughout the 1990s to elect their candidates of choice.

A proposed change has a discriminatory effect when it will "lead to a retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise." Beer v. United States, 425 U.S. 125, 141 (1976). If the proposed plan materially reduces the ability of minority voters to elect candidates of their choice to a level less than what they enjoyed under the benchmark plan, preclearance usually must be denied. State of Georgia v. Ashcroft, C.A. No. 2001-2111 (D.D.C. Apr. 5, 2002), slip op. at 117-18.

Also important to our conclusion that an objection is warranted is the availability of easily constructed alternative plans that not only are non-retrogressive and meet other traditionally recognized redistricting principles, but are ameliorative, in that they increase the voting strength of minority voters in the Banister District. While by no means dispositive, the Department has recognized this factor as important to an analysis of retrogression. Guidance Concerning Redistricting and Retrogression under Section 5 of the Voting Rights Act of 1965, 42 U.S.C. 1973c, 66 Fed. Reg 5411 (January 18, 2001).

With respect to the county's ability to demonstrate that the plan was adopted without a prohibited purpose, the starting point of our analysis is Village of Arlington Heights v. Metropolitan Housing Development Corp., 429 U.S. 252, 266 (1977). Under Arlington Heights, the Supreme Court identified the analytical structure for determining whether racially discriminatory intent exists. This approach requires an inquiry into 1) the impact of the decision; 2) the historical background of the decision, particularly if it reveals a series of decisions undertaken with discriminatory intent; 3) the sequence of events leading up to the decision; and 4) whether the challenged decision departs,

either procedurally or substantively, from the normal practice; and contemporaneous statements and viewpoints held by the decision-makers. Id. at 266-68.

Several factors establish that the county falls short of demonstrating the lack of retrogressive purpose. Chief among these are (1) it appears that the Board procedurally blocked formal consideration of alternative, ameliorative plans supported by at least one council member and members of the black community; (2) the county was aware of easily drafted, non-retrogressive and ameliorative alternatives, most of which were in fact similar to the county's own preferred plan; and (3) the apparently pretextual nature of the reasons given by the county for its decision to adopt the plan rather than a non-retrogressive alternative.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. Georgia v. United States, 411 U.S. 526 (1973); Reno v. Bossier Parish School Board, 528 U.S. 320 (2000); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.52). In light of the considerations discussed above, I cannot conclude that your burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the submitted redistricting plan.

We note that under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed changes neither have the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. See 28 C.F.R. 51.44. In addition, you may request that the Attorney General reconsider the objection. See 28 C.F.R. 51.45. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the changes continue to be legally unenforceable. Clark v. Roemer, 500 U.S. 646 (1991); 28 C.F.R. 51.10.

The Attorney General will make no determination regarding the submitted realignment of voting precincts, and four polling place changes because they are dependent upon the redistricting plan.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action Pittsylvania County plans to take concerning this matter. If you have any questions, you should call Ms. Maureen Riordan (202) 353-2087, an

attorney in the Voting Section. Refer to File Nos. 2001-2026 and 2001-2501 in any response to this letter so that your correspondence will be channeled properly.

Sincerely,

Ralph F. Boyd, Jr.
Assistant Attorney General
Civil Rights Division

U. S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General *Washington, D.C. 20530*

May 19, 2003

Bruce D. Jones, Jr., Esq.
County Attorney
P.O. Box 690
Eastville, Virginia 23347-0690

Dear Mr. Jones:

This refers to the 2002 redistricting plan for the board of supervisors and the realignment of voting precincts for Northampton County, Virginia, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your responses to our February 10, 2003, request for additional information through March 21, 2003.

With regard to the redistricting plan, we have considered carefully the information provided, as well as information in our files, census data, and comments from other interested persons. According to the 2000 Census, Northampton County has a population of 13,093, of whom 43.1 percent are black persons, and 3.5 percent are Hispanic. From 1990 to 2000, the county's total population remained virtually unchanged, while the black percentage of the total population decreased slightly, from 46.2 percent to 43.1 percent.

Our analysis of the county's electoral history indicates that prior to 1991, only two black candidates had ever been elected to the board and their success came only with reliance on single-shot voting. Further, under the benchmark plan, black voters had been able to elect candidates of choice in three districts. In two of the benchmark districts, black persons are a majority of the voting age population [VAP]. The proposed plan has no district in which black persons constitute a majority of the VAP. In the third viable district in the benchmark, black residents constitute 47.8 percent of the VAP with all minority residents totaling 52.8 percent of that population. Under the proposed plan, the combined minority voting population is 50.3

percent. In the three benchmark districts, the lowest overall minority VAP percent is 52.8, whereas the highest combined minority VAP in any district in the proposed plan is 52.1 percent.

The county bases its determination that black voters will continue to have the ability to elect candidates of their choice in three of the six districts under the proposed plan on the "evidence that voters in Northampton County do not vote on purely racial grounds." In support of this conclusion, the county relies on four black-white races from 1983, 1987, and 1988, purporting to show that "at least some African-American voters were willing to vote for white candidates" and that "at least some white voters were willing to vote for an African-American candidate."

Our electoral analysis of these and other elections precludes us from reaching a similar conclusion. First, two of the elections relied upon by the county, which were county-wide elections in 1987, in fact, did suggest racial bloc voting. The analysis evidenced overwhelming support by black voters for black candidates and very little white support of those candidates by white voters (3% in one race and 7.2% in another). The other two elections relied on by the county were the races in 1983 and 1987 in which Mr. Godwin (B) successfully ran for the board of supervisors. Although Mr. Godwin does appear to have received support from some white voters, the significance of the 1987 victory to the county's position is diminished significantly by the fact that there were only two candidates running for two seats. In any event, the county's assertion that there is some level of cross-over voting does not mean that, as a general matter, white voters do not vote as a bloc to defeat black-preferred candidates in Northampton County. As noted above, our analysis did not indicate a total absence of white support for black-preferred candidates, only that the level of such support was, in most instances, minimal, at best.

The election patterns within the county since 1991 do not alter our view. In the last ten years, no black-preferred candidate has won in a district in which whites were a majority of the VAP and in the district in which neither blacks nor whites constitute a majority of the total VAP, a black-preferred candidate has only won once in the past three elections.

The analysis of electoral behavior indicates that a reduction of only a few percentage points has the potential for a significant difference in the outcome. Accordingly, the county

has not established that a plan that unnecessarily reduces the black population percentage in these districts will afford them the same ability to elect candidates of choice that they now have.

The county has also suggested any retrogression was unavoidable because the county's black VAP percentage dropped 2.4 points since 1990, and is now 40.6 percent. We have examined the county's argument and have determined that it does not withstand scrutiny.

First, the county's proposed plan does not even maintain black voting strength in two of the six districts, much less the three existing districts. Even considering black and other minority voters together, the plan presently before us results in a retrogression of black voting strength. Second, as we informed you on September 28, 2001, during our review of the county's 2001 redistricting plan, we devised an illustrative plan that was not retrogressive as one means of determining whether the retrogression that we discovered in your plan was avoidable. *Guidance Concerning Redistricting and Retrogression under Section 5 of the Voting Rights Act of 1965*, 42 U.S.C. 1973c, 66 Fed. Reg 5411, 5413 (January 18, 2001).

We have discussed that plan with you on several occasions since that time. As you know, the purpose of the illustrative plan is only to indicate that a non-retrogressive plan is possible and the county has no obligation to consider the illustrative plan for any purpose other than that. However, the reasons provided by the county for not adopting a non-retrogressive plan similar to the illustrative plan are not persuasive. The county has indicated that certain features in the illustrative plan (for example, the distances some voters must drive to vote) make the plan, in its view unacceptable; however, it concedes that these same features exist in its proposed plan, the benchmark plan, or both. Moreover, following the April 10, 2002, meeting with Departmental employees, at which the county identified, for the first time, several unincorporated areas whose boundaries, although somewhat vague, could not be split by district lines, we revised the illustrative plan to address each of the concerns raised regarding community boundaries, and developed a plan with black VAP percentages similar to those in the benchmark. Thus, despite the various

restraints that the county is operating under, the retrogression that would result from implementation of the 2002 plan is avoidable.

Under these circumstances, I am unable to conclude as I must under Section 5, that the county has met its burden of demonstrating that the redistricting plan does not have a discriminatory effect. Georgia v. United States, 411 U.S. 526 (1973); see also 28 C.F.R 51.52. Therefore, on behalf of the Attorney General, I must object to the 2002 redistricting plan for the board of supervisors of Northampton County.

We note that under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed changes neither have the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. See 28 C.F.R. 51.44. In addition, you may request that the Attorney General reconsider the objection. See 28 C.F.R. 51.45. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the submitted plan continues to be legally unenforceable. Clark v. Roemer, 500 U.S. 646 (1991); 28 C.F.R. 51.10.

The Attorney General will make no determination regarding the submitted realignment of voting precincts because it is dependent upon the objected to redistricting plan.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action Northampton County plans to take concerning this matter. If you have any questions, you should call Mr. Robert P. Lowell (202-514-3539), an attorney in the Voting Section.

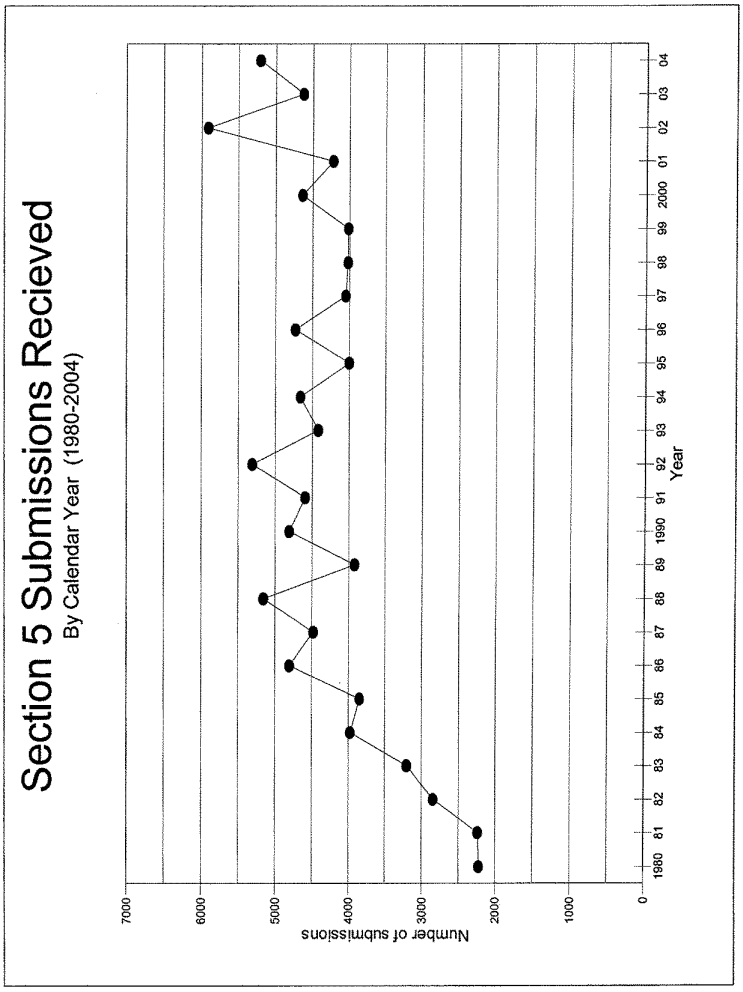
Sincerely,

Ralph F. Boyd, Jr.
Assistant Attorney General

APPENDIX TO THE STATEMENT OF BRADLEY J. SCHLOZMAN: ADMINISTRATIVE REVIEW OF VOTING CHANGES

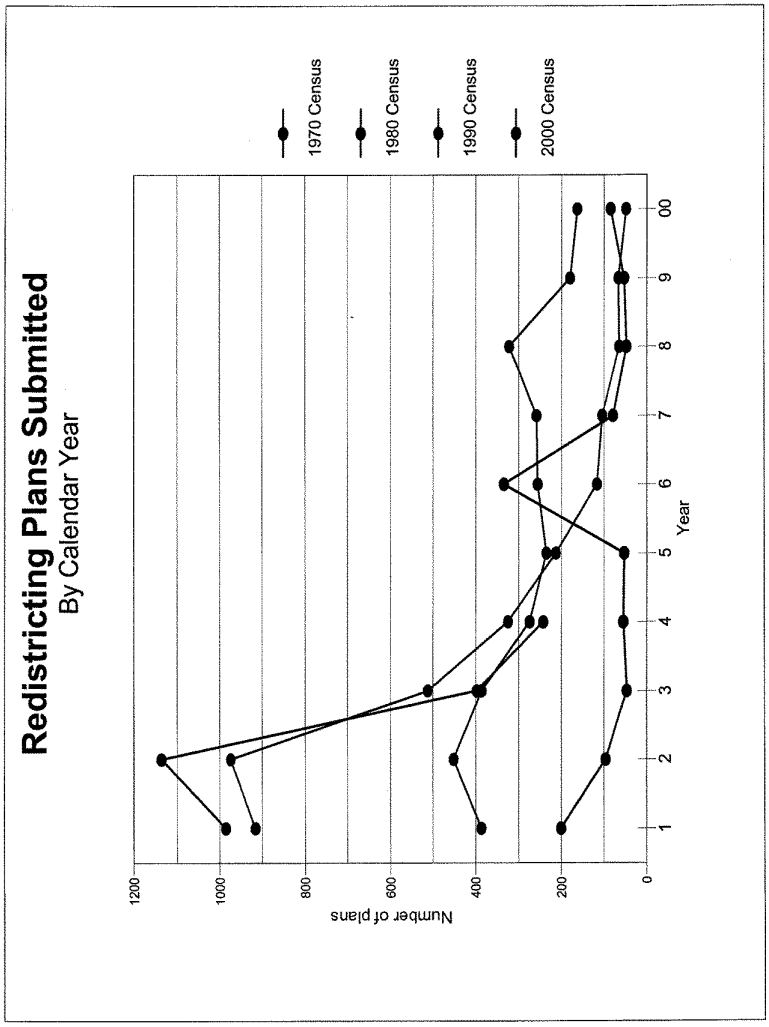
ADMINSTRATIVE REVIEW OF VOTING CHANGES					
1965-2005 (By calendar year)					
Year	ALL SUBMISSIONS			REDISTRICTING PLANS	
	Number	Objections		Number	Objections
1965	1	0		0	0
1966	2	0		2	0
1967	6	0		4	0
1968	6	6		0	0
1969	15	5		12	0
1970	60*	4		25	1
1971	331*	66		201	32
1972	362	30		97	11
1973	345	32		47	6
1974	414*	76		55	5
1975	1046*	79		53	11
1976	2685*	124		335	11
1977	1817*	42		79	3
1978	1946*	74		48	12
1979	1914*	54		53	2
1980	2226	32		85	9
1981	2240	24		387	8
1982	2848	66		452	47
1983	3203	52		386	40
1984	3975	49		274	16
1985	3847	37		235	10
1986	4807	41		256	14
1987	4478	29		258	8
1988	5155	39		322	9
1989	3920	30		180	8
1990	4809	37		164	6
1991	4592	75		916	66
1992	5307	77		974	67
1993	4421	69		512	40
1994	4661	61		325	10
1995	3999	19		213	7
1996	4729	7		116	3
1997	4047	8		105	2
1998	4021	8		65	3
1999	4012	5		67	1
2000	4638	4		49	1
2001	4222	7		985	4
2002	5910	21		1138	19
2003	4628	8		400	5
2004	5211	3		241	1
2005	3703	1		88	1
Notes:	120,559	1401		10,204	499
	* Indicates fiscal year totals				
	One submission may contain more than one change.				
	This list does not reflect withdrawals of objections				
	See Complete Listing of Objections as of July 11, 2005				

APPENDIX TO THE STATEMENT OF BRADLEY J. SCHLOZMAN: SECTION 5 SUBMISSIONS RECEIVED BY CALENDAR YEAR (1971–2004)



APPENDIX TO THE STATEMENT OF BRADLEY J. SCHLOZMAN: REDISTRICTING PLANS SUBMITTED BY CALENDAR YEAR

25-Oct-05



APPENDIX TO THE STATEMENT OF BRADLEY J. SCHLOZMAN: ALL SECTION 4 BAILOUT CASES FILED UNDER THE CURRENT BAILOUT STANDARD THROUGH OCTOBER 17, 2005, BY CITY/COUNTY

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

AUGUSTA COUNTY, VIRGINIA, a political subdivision of the Commonwealth of Virginia, 18 Government Center Lane P.O. Box 590 Verona, Virginia 24482-0590 Plaintiff, v. ALBERTO R. GONZALES, Attorney General of the United States of America, BRADLEY J. SCHLOZMAN, Acting Assistant Attorney General, Civil Rights Division, United States Department of Justice, Washington, DC, Defendants.	)	Civil Action No. Three-Judge Court Requested

COMPLAINT

Augusta County alleges that:

1. This is an action brought for declaratory relief pursuant to Section 4 of the Voting Rights Act of 1965, as amended, 42 U.S.C. §1973b (hereinafter "Section 4"). This Court has jurisdiction over this action pursuant to 28 U.S.C. §1343(a)(4), 28 U.S.C. §2201, 42 U.S.C. §1973b, and 42 U.S.C. §1973l(b).

2. Plaintiff Augusta County ("the County") is a political subdivision of the Commonwealth of Virginia. The County is located in the Shenandoah Valley, approximately 150 miles from Washington, DC. The County covers 967 square miles, more than half of the size of Rhode Island. It is the second largest county (in land area) in Virginia.

3. Located within Augusta County are the independent cities of Staunton and Waynesboro. Augusta County residents are ineligible to vote in the municipal elections of Staunton and Waynesboro, and residents of those two independent cities are ineligible to vote in County elections. Also located within Augusta County is the town of Craigsville, Virginia. Craigsville residents are eligible to vote in both town elections and in county elections.

4. In addition to the County itself, there are two elected governmental units operating completely within Augusta County. One of these is the town government in Craigsville. Craigsville is governed by a six-member town council. Elections for the town council are conducted at-large, and a plurality win system is in effect. Elections are held every two years and terms of office for town council members are staggered. The other governmental unit operating completely within Augusta County is the Augusta County School Board ("School Board"). Since 1995, the School Board has been an elected body, with members elected from the same districts as the County Board of Supervisors.

5. The Town of Grottoes straddles the border of both Augusta and Rockingham counties. The portion of Grottoes that lies within Rockingham County is approximately 1.3 square miles, and the portion of the town in Augusta County is less than 0.1 square miles. According to the 2000 census, the total population of Grottoes is 2,114, with only 4 persons living in that part of Grottoes that lies within Augusta County. Rockingham County has previously obtained a bailout from coverage under the special provisions of the Voting Rights Act, as amended, 42 U.S.C. §1973b.

6. The Augusta County Board of Supervisors is the governing body that formulates policies for the administration of government in Augusta County. It is comprised of seven members elected from single-member districts to serve four-year terms, which run concurrently.

The County Board of Supervisors appoints a County Administrator to serve as the County's chief administrative officer.

7. The seven Board of Supervisors districts presently contain a total of 25 polling locations (and one additional central absentee voting location) that are situated geographically in a manner that is convenient to voters across the County. All polling places in the County are accessible to voters with physical disabilities.

8. According to the 2000 census, Augusta County, Virginia has a total population of 65,615. Of this number, 2360 persons (or 3.6%) are black and 620 (or 0.9%) are Hispanic. The voting age population of the County, according to the 2000 census, is 50,048. Of this number, 1966 (3.9%) are black and 407 (0.8%) are Hispanic. The Town of Craigsville, according to the 2000 census, has a total population of 979. Of this number, 17 (1.7%) are black and 4 (0.4%) are Hispanic.

9. Like other jurisdictions in the Commonwealth of Virginia, Augusta County does not collect or maintain voter registration data by race. As of July 2005, there are 38,627 registered voters in Augusta County.

10. The number of registered voters in the County has risen over the last couple of decades. In 1984, for example, there were only 22,899 registered voters in the County. By 1994, the number of registered voters had grown to 25,732. The number of registered voters in the County has grown even more dramatically over the last decade. From 1995 to 2005, the total number of registered voters in the County grew by 46%, from 26,468 to 38,627.

11. Voter turnout in elections within Augusta County varies according to the offices up for election. In the last three Presidential elections in 1996, 2000, and 2004, for example, 78.8%, 74.5% and 77.1% of the County's registered voters turned out to vote, respectively. In the

General Elections for Governor held in November 1997 and 2001, 54.9% and 51.5% of the County's registered voters turned out to vote, respectively. Voter turnout (the percentage of those registered voters who cast ballots) for the Augusta County Board of Supervisors and School Board elections in the last two election cycles (1999 and 2003) was 28.1% and 36.1%, respectively.

12. As a political subdivision of the Commonwealth of Virginia, plaintiff Augusta County has been subject to certain special remedial provisions of the Voting Rights Act, including the provisions of Section 5 of the Act, 42 U.S.C. §1973c. Under Section 5 of the Act, known as the "preclearance" provisions, covered jurisdictions, including Augusta County, are required to seek and obtain preclearance from either this Court or from the United States Attorney General of any change affecting voting, and such preclearance must be obtained prior to implementation.

13. Since its inception in 1965, the Voting Rights Act has allowed States, which are subject to these special provisions of the Act, to exempt themselves from coverage under the Act's special remedial provisions, if they can satisfy standards established in the Voting Rights Act.

14. In 1982, Congress made changes in the exemption standards of the Act. As amended in 1982, Section 4 of the Voting Rights Act provides that States, as well as political subdivisions within those States that are covered under the special provisions of the Act, are entitled to a declaratory judgment in this Court granting an exemption from the Act's special remedial provisions if, during the ten years preceding the filing of the action:

> A) no test or device has been used either for the purpose or with the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group, within the State or political subdivision seeking a declaratory judgment;

> B) no final judgment has been entered by any court determining that the political subdivision has denied or abridged the right to vote on account of race, color, or membership in a language minority group;
> C) no Federal examiners have been assigned to the political subdivision;
> D) all governmental units within the political subdivision have complied with the preclearance provisions of Section 5 of the Voting Rights Act, 42 U.S.C. 1973c; and
> E) the Attorney General has not interposed any objection to any proposed voting change within the political subdivision and no declaratory judgment has been denied with regard to such a change by this Court under Section 5.

15. As amended in 1982, Section 4 of the Act also requires States and political subdivisions seeking an exemption from the Act's special provisions to show that, during the pendency of the declaratory judgment action seeking such exemption:

> A) Any voting procedure or method of election within the state or political subdivision exists which inhibits or dilutes equal access to the electoral process has been eliminated;
> B) Constructive efforts have been made by the political subdivision to eliminate any intimidation or harassment of persons exercising rights under the Voting Rights Act; and
> C) Expanded opportunities for convenient registration and voting exists within the State or political subdivision.

16. As described in each of the paragraphs set forth below, Augusta County has fully complied with the provisions of Section 4 of the Act as set forth in paragraphs 14 and 15, *supra*.

17. Over the years, Augusta County has made numerous submissions to the Department of Justice seeking preclearance of voting changes under Section 5 of the Voting Rights Act. Since 1983, for example, the County has made approximately 50 timely submissions of voting changes to the Department of Justice for Section 5 preclearance. The defendant Attorney General has approved each and every one of these voting changes. Since passage of the Voting Rights Act in 1965, not a single objection has been interposed by the Department of Justice to any voting change in Augusta County. In approving each and every change, the defendants have concluded that the voting changes submitted were free of a racially discriminatory purpose or a

racially discriminatory effect. Many of the voting changes made over the years in Augusta County and submitted for Section 5 preclearance actually expanded the opportunities for County residents to become registered voters and to cast ballots.

18. Voter registration opportunities in the County are readily and equally available to all citizens. The voter registration office for the County is located at the county government center in Verona, a central and convenient location for County residents. The voter registration office is office is open from 8 a.m. to 5 p.m., Monday through Friday.

19. Voters in Augusta County may also register by mail, and voter registration applications are available at locations convenient to voters in the County, such as department of motor vehicles offices, military recruitment offices, public assistance agency offices, and the citizen information desk in the County Government Center lobby. Information about voter registration (including a voter registration application that may be downloaded) is also available on the County's website, at http://www.co.augusta.va.us.

20. The opportunity to become a registered voter in Augusta County is also available under the National Voter Registration Act (the "NVRA") at Department of Motor Vehicle ("DMV") offices and public assistance agencies in Augusta County. While in past years most voters became registered at the County's voter registration office, the implementation of the NVRA in Virginia over the last decade has changed the origin of the great majority of registration applications. Today, many of the County's new registrants register through the DMV and by mail. As a result of implementation of the NVRA, the opportunities for persons to register to vote in Augusta County have been made more convenient and have been expanded.

21. Augusta County also has a three-member Electoral Board, appointed pursuant to Virginia state law, and the Electoral Board nominates a roster of persons each February to work

as poll workers for a one-year term. Recommendations of persons to be appointed as poll workers originate with the chairs of the local Democratic and Republican parties. Not a single person recommended by a political party chair to serve as a poll official has ever been rejected by the Electoral Board.

22. Because the County has found it difficult over the years to find enough persons willing to serve as poll officials, the Augusta County General Registrar has actively recruited persons to work at the polls. In recent years, the State's voter registration applications (including the one used at DMV and public assistance agencies in Augusta County) have included a special section soliciting persons to serve as poll officials. These applications are publicly available at the Registrar's office, County offices, and the Commissioner of Revenue and Treasurer's offices. Not a single eligible Augusta County resident who has expressed an interest in becoming an election official has ever been denied the opportunity to do so. Although the number and percentage of minority persons in Augusta County is quite small, minority citizens have served as poll officials.

23. No person in Augusta County has been denied the right to vote on account of race, color, or membership in language group since at least the time that the Voting Rights Act was enacted in 1965.

24. No "test or device" as defined in the Voting Rights Act (42 U.S.C. §1973b(c)) has been used in Augusta County as a prerequisite to either registering or voting for at least the preceding ten years.

25. Augusta County has never been the subject of any lawsuit in which it was alleged that a person (or persons) was being denied the right to vote on account of race, color, or membership in a language minority group.

26. No voting practices or procedures have been abandoned by the County or challenged on the grounds that such practices or procedures would have either the purpose or the effect of denying the right to vote on account of race, color, or membership in a language minority group.

27. Augusta County has not employed any voting procedures or methods of election that inhibit or dilute equal access to the electoral process by minority voters in the County. Minority voters in Augusta County are not being denied an equal opportunity to elect candidates of their choice to the County Board of Supervisors, to the County School Board, or the Craigsville town council.

28. Federal examiners have never been appointed or assigned to Augusta County under Section 3 of the Voting Rights Act, 42 U.S.C. §1973a.

29. There are no known incidents in Augusta County where any person exercising his or her right to vote has been intimidated or harassed at the polls (or while attempting to register to vote).

30. The allegations set forth in paragraphs 17 through 29, above, if established, entitle Augusta County to a declaratory judgment under Section 4 of the Voting Rights Act, 42 U.S.C. §1973b, exempting the County and all governmental units within the County from the special remedial provisions of the Voting Rights Act.

31. Pursuant to 42 U.S. C. §1973b, Augusta County has "publicize[d] the intended commencement ...of [this] action in the media serving [the County] and in the appropriate United States post offices." In August 2005, for example, the County published a Notice that it intended to commence this action and that it intended to file a proposed settlement of this action in the The News Leader and The News Virginian, two newspapers of general circulation in Augusta County. The County also posted copies of Notices "in the appropriate United States

post offices" and at various public places throughout Augusta County. The County also published a legal Notice that it intended to commence and pursue the bailout process in the The News Leader and The News Virginian on February 23 and March 2, 2005. In addition, in late February and early March 2005, the County posted copies of that bailout legal Notice at approximately eight public locations throughout the County, including the County Courthouse and the Office of Voter Registration. The County also held a public hearing on the proposed bailout in March 2005, so that County residents could learn about the bailout process and the County's intentions to seek a bailout.

WHEREFORE, plaintiff Augusta County respectfully prays that this Court:

A. Convene a three-judge court, pursuant to 28 U.S.C. §2284 and 42 U.S.C. §1973b, to hear the claims raised in plaintiff's complaint;

B. Enter a declaratory judgment that Augusta County and all governmental units within the County are entitled to a bailout from the special remedial provisions of the Voting Rights Act; and

C. Grant such other relief as may be necessary and proper as the needs of justice may require.

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IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF COLUMBIA

CITY OF FAIRFAX, VIRGINIA, a political subdivision of the Commonwealth of Virginia, City Hall, Fairfax, Virginia 22030, Plaintiff, v. JANET RENO, Attorney General of the United States of America, ISABELLE KATZ PINZLER, Acting Assistant Attorney General, Civil Rights Division, Defendants.	CASE NUMBER 1:97CV02212 JUDGE: James Robertson Civil DECK TYPE: Three Judge Court DATE STAMP: 09/25/97

COMPLAINT

The City of Fairfax, Virginia alleges that:

1. This is an action brought for declaratory relief pursuant to Section 4 of the Voting Rights Act of 1965, as amended, 42 U.S.C. §1973b (hereinafter "Section 4"). This Court has jurisdiction over this action pursuant to 28 U.S.C. §1343(a)(4), 28 U.S.C. §2201, 42 U.S.C. §1973b, and 42 U.S.C. 1973l(b).

2. Plaintiff City of Fairfax is a political subdivision of the Commonwealth of Virginia. See Va. Code Ann. §1-13.2. Fairfax is an independent city, chartered by the Virginia General Assembly. See Va. Constitution Art, VII, Section 1 and Va. Code Ann. §15.1-833. In Virginia, counties and cities are independent of each other for governmental, geographical and political purposes.

3. According to the 1990 census, the City of Fairfax contains a total population of 19,622. Of this number, 16,830 are white (86%), 966 are African American (5%), 1409 are Asian American (7%), and 417 are either American Indian or "other" (2 %).[1] Hispanics make up 5.9% of the City's total population, according to the 1990 census. The racial composition of the City's voting age population (age 18 or above), according to the 1990 census, is as follows:

Group	# of persons/VAP	%/VAP[2]
Total whites 18+	13829	87.2%
Total blacks 18+	710	4.5%
Total Asian Americans 18+	1044	6.6%
Total other 18+	280	1.8%
Total	15863	

4. Like other jurisdictions in the Commonwealth of Virginia, the City of Fairfax does not collect or maintain voter registration data by race. Current data show, however, that a significant proportion of the City's voting age population is registered to vote. As of April 30, 1997, there were a total of 12,160 persons registered to vote in the City of Fairfax, or 76.6% of the City's voting age population.

5. The City's 1962 charter provided that the city's governing body was to be comprised of a mayor and six members of the council to be "elected by the qualified voters of the city at large." Charter, §3.1. The basic electoral system for the City of Fairfax established in the original 1962 charter has remain unchanged over the last thirty-five years. A plurality win system has always

[1] These numbers represent a slight increase (1.2%) in the overall population of the City of Fairfax as compared to 1980. According to the 1980 census, there were 19,390 persons living in the City. Of this number, 85.8% were white, 4.9% were black, 7.2% were Asian Americans, and 2.1% were listed as American Indian or "other".

[2] Percentages in this column may not equal to 100% when totaled due to rounding.

been used, with the six candidates receiving the most votes elected to the council. City elections are nonpartisan. There was never been a full slate requirement in effect, nor have any other anti-single-shot voting provisions ever been used in municipal elections.

6. As a political subdivision of the Commonwealth of Virginia, the plaintiff City of Fairfax has been subject to certain special remedial provisions of the Voting Rights Act, including the provisions of Section 5 of the Act, 42 U.S.C. 1973c. Under Section 5 of the Act, known as the "preclearance" provisions, covered jurisdictions, including the City of Fairfax, are required to seek and obtain preclearance from either this Court or from the United States Attorney General of any change affecting voting, and such preclearance must be obtained prior to implementation.

7. Since its inception in 1965, the Voting Rights Act has allowed the states and political subdivisions, which are subject to these special provisions of the Act, to exempt themselves from coverage under the Act's special remedial provisions, if they can satisfy standards established in the Voting Rights Act. Section 4(a) of the Voting Rights Act, 42 U.S.C. 1973b, provides that a state or political subdivision subject to the Act's special provisions may be exempted from those provisions if it can demonstrate in a declaratory judgment action in this Court that it has both: A) complied with the Voting Rights Act during the ten-year period prior to filing the action; and B) taken positive steps both to encourage minority political participation and to remove structural barriers to such participation.

8. In order to demonstrate compliance with the Voting Rights Act during the ten-year period prior to commencement of a declaratory judgment action under Section 4(a), a political

subdivision of the Commonwealth of Virginia must satisfy five conditions:

A) no test or device may have been used within the political subdivision during that ten-year period for the purpose or with the effect of denying or abridging the right to vote on account of race or color;

B) no court of the United States may have issued a final judgment during that ten-year period that the right to vote has been denied or abridged on account of race or color anywhere within the territory of the political subdivision; no consent decree, settlement, or agreement may have been entered into during that ten-year period that resulted in the abandonment of a voting practice challenged on such grounds; and no such claims may be pending at the time the declaratory judgment action is commenced;

C) no Federal examiners may have been assigned to the political subdivision during the ten-year period preceding commencement of the declaratory judgment action;

D) the political subdivision and all governmental units within its territory must have complied with Section 5 of the Voting Rights Act, 42 U.S.C. 1973c, during that ten-year period, including the requirement that voting changes covered under Section 5 were not enforced without Section 5 preclearance; and that all voting changes denied Section 5 preclearance by the Attorney General or this Court have been repealed; and

E) neither the Attorney General nor this Court may have denied Section 5 preclearance to a submission by the political subdivision or any governmental unit within its territory during that ten-year period, nor may any Section 5 submissions or declaratory judgment actions be pending. 42 U.S.C. 1973b(a)(1)(A)-(E).

9. To obtain a declaratory judgment under Section 4(a) of the Voting Rights Act, a political subdivision and all governmental units within its territory must have eliminated voting procedures and methods of election that inhibit or dilute equal access to the electoral process. 42 U.S.C. 1973b(a)(1)(F)(i). In addition, the political subdivision and all governmental units within its territory must have engaged in constructive efforts to: eliminate intimidation and harassment of persons exercising voting rights; expand the opportunity for convenient registration and voting for every person of voting age; and appoint minority persons as election officials throughout the jurisdiction and at all stages of the election and registration process. 42 U.S.C. 1973b(a)(1)(F)(ii)-(iii). The political subdivision seeking a declaratory judgment under Section 4(a) is also required to present evidence of minority participation, including evidence of the levels

of minority group registration and voting, changes in such levels over time, and "disparities between minority-group and non-minority-group participation." 42 U.S.C. 1973b(a)(2). The political subdivision may not in the preceding ten years have engaged in violations of any provision of the Constitution or laws of the United States or any State or political subdivision with respect to discrimination in voting on account of race or color. 42 U.S.C. 1973b(a)(3). Finally, the political subdivision must provide public notice of its intent to seek a declaratory judgment action under Section 4(a). 42 U.S.C. 1973b(a)(4).

10. For at least the last ten years, the City of Fairfax has made a timely submission of all changes affecting voting for preclearance review under Section 5 of the Voting Rights Act. 42 U.S.C. 1973c. The Attorney General has never interposed an objection to any of the City's submitted changes. Since the City has only sought administrative preclearance, the District Court for the District of Columbia has not denied a Section 5 declaratory judgment in any case where the City of Fairfax sought preclearance. The voting changes adopted by the City over the years usually have *expanded* the opportunity for convenient registration and voting.

11. Voter registration opportunities in the City of Fairfax are readily and equally available to all citizens, regardless of race, color, or membership in a language minority group. Any person who wants to become a registered voter may apply and register *in person* at the Office of the General Registrar in the City Hall Annex. The office is open from 8:30 a.m. to 5 p.m., Monday through Friday. In addition, the Office of the General Registrar conducts voter registration each Monday at the U.S. Post Office on Chain Bridge Road. Voter registration applications are also available *by mail* at five locations in the City, and the Registrar's office of the City of Fairfax conducts voter registration at special sites in the City throughout the year. Voter

registration is also available to residents of Fairfax under the National Voter Registration Act implemented in Virginia last year.

12. Voter registration sites, as well as the locations of mail-in voter registration application forms, exist throughout the City and thus are available to all citizens in the City. The opportunity to register is convenient to the entire city population.

13. The most recent statistics on voter turnout in the City (*i.e.*, those persons voting divided by the total number of those registered) show that the level of political participation is quite high and extends to precincts across the City. As of the time of the November 1996 elections, there were 11,813 persons registered to vote in the City of Fairfax. In the November 1996 elections, 8,878 (or 75.2%) of the City's registrants turned out to vote. Voters in all six precincts turned out at a level exceeding 70% of those eligible, ranging from a low of 71.5% in Precinct 1 to a high of 77.4% in precinct 2. In the 1992 general elections, 89.7% of the City's registered voters turned out to vote, with each precinct reporting turnout above the 88% level.

14. Voter turnout rate in municipal elections has averaged around 30% since 1980. The voter turnout in the most recent city council elections (May 1996) was higher (30.6%) than in any regular city council election held since 1984.

15. The City's Electoral Board appoints persons to work as poll officials (called officers of election). No member of a minority group has been denied an appointment to serve as a poll official.

16. Members of minority groups have worked in the Registrar's office and have served as election officials in Fairfax during the last ten years. These individuals have served in a variety of capacities, including: absentee voting election official; clerical (processing voter registration

applications received from members of the general public); and as poll officials on election day.

17. Members of racial minority groups also have been have been appointed to serve as poll officials in every election since at least 1989. During this time period, there have been 12 elections held within the City. Minority group members who have served as poll officials on election day have been assigned to different precincts and thus have served throughout the jurisdiction.

18. No person in the City of Fairfax has been denied the right to vote on account of race, color, or membership in language group since at least the time the Voting Rights Act was enacted in 1965. No "test or device" as defined in the Voting Rights Act (42 U.S.C. 1973b(c)) has been used in the City of Fairfax for at least the preceding ten years.

19. The City of Fairfax has never been the subject of any lawsuit in which it was alleged that a person (or persons) was being denied the right to vote on account of race, color, or membership in a language minority group.

20. No voting practices or procedures, have been abandoned by the City or challenged on the grounds that such practices or procedures would have either the purpose or the effect of denying the right to vote on account of race, color, or membership in a language minority group.

21. The City of Fairfax has never employed any voting procedures or methods of election that inhibit or dilute equal access to the electoral process in the City.

22. No Federal examiners have ever been appointed or assigned to the City of Fairfax under Section 3 of the Voting Rights Act, 42 U.S.C. 1973a.

23. There are no known incidents in the City of Fairfax where persons exercising their right to vote at the polls have been intimidated or harassed.

24. As demonstrated in paragraphs 10 through 23, supra, the City of Fairfax is entitled to a declaratory judgment under Section 4 of the Voting Rights Act, exempting the City from the special remedial provisions of the Voting Rights Act.

25. Pursuant to 42 U.S.C. 1973b, the City of Fairfax has publicized the intended commencement of this action in the media serving the City of Fairfax and in the appropriate United States post offices.

WHEREFORE, plaintiff City of Fairfax respectfully prays that this Court:

A. Convene a three-judge court, pursuant to 28 U.S.C. 2284 and 42 U.S.C.1973b, to hear the claims raised in plaintiff's complaint;

B. Enter a declaratory judgment that the City of Fairfax is entitled to an exemption from the special remedial provisions of the Voting Rights Act;

C. Grant such other relief as may be necessary and proper as the needs of justice may require, including costs in accordance with 42 U.S.C. 1973 l (e).

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This 25th day of September, 1997.

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF COLUMBIA

CITY OF FAIRFAX, VIRGINIA, Plaintiff, v. JANET RENO, Attorney General of the United States of America, ISABELLE PINZLER, Acting Assistant Attorney General, Civil Rights Division, Defendants.	CA 97-2212-JR

CONSENT JUDGMENT AND DECREE

This action was instituted by the Plaintiff City of Fairfax, a political subdivision and independent city of the Commonwealth of Virginia. The City of Fairfax is subject to the provisions of Section 5 of the Voting Rights Act. 42 U.S.C. 1973c. The Plaintiff seeks a declaratory judgment pursuant to Section 4(a) of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973b. A court of three judges has been convened as provided in 42 U.S.C. 1973b(a)(5) and 28 U.S.C. 2284.

Section 4(a) of the Voting Rights Act provides that a state or political subdivision subject to the special provisions of the Voting Rights Act may be exempted from those provisions if it can demonstrate in an action for a declaratory judgment before the United States District Court of the District of Columbia that it has both 1) complied with the Voting Rights Act during the ten-year period prior to filing the action; and 2) taken positive steps both to encourage minority political participation and to remove structural barriers to minority electoral influence.

In order to demonstrate compliance with the Voting Rights Act during the ten-year period prior to commencement of a declaratory judgment action under Section 4(a), a political subdivision of the State of Virginia must satisfy five conditions: 1) no test or device may have been used within the political subdivision during that ten-year period for the purpose or with the effect of denying or abridging the right to vote on account of race or color; 2) no court of the United States may have issued a final judgment during that ten-year period that the right to vote has been denied or abridged on account of race or color anywhere within the territory of the political subdivision; no consent decree, settlement, or agreement may have been entered into during that ten-year period that resulted in the abandonment of a voting practice challenged on such grounds; and no such claims may be pending at the time the declaratory judgment action is commenced; 3) no Federal examiners may have been assigned to the political subdivision during the ten-year period preceding commencement of the declaratory judgment action; 4) the political subdivision and all governmental units within its territory must have complied with Section 5 of the Voting Right Act, 42 U.S.C. 1973c, during that ten-year period, including the requirement that voting changes covered under Section 5 were not enforced without Section 5 preclearance, and that all voting changes denied Section 5 preclearance by the Attorney General or the District Court for the District of Columbia have been repealed; and 5) neither the Attorney General nor the District Court for

the District of Columbia may have denied Section 5 preclearance to a submission by the political subdivision or any governmental unit within its territory during that ten-year period, nor may any Section 5 submissions or declaratory judgment actions be pending. 42 U.S.C. 1973b(a)(1)(A)-(E).

Also, to obtain the declaratory judgment, a political subdivision and all governmental units within its territory must have eliminated voting procedures and methods of election that inhibit or dilute equal access to the electoral process. 1973b(a)(1)(F)((i). In addition, the political subdivision and all governmental units within its territory must have engaged in constructive efforts to eliminate intimidation and harassment of persons exercising voting rights, and to expand the opportunity for convenient registration and voting for every person of voting age, and the appointment of minority persons as election officials throughout the jurisdiction and at all stages of the election and registration process. 42 U.S.C. 1973b(a)(1)(F)(ii)-(iii).

The political subdivision is required to present evidence of minority participation, including evidence of the levels of minority group registration and voting, changes in such levels over time, and disparities between minority-group and non-minority-group participation. 42 U.S.C. 1973b(a)(2). The political subdivision may not in the preceding ten years have engaged in violations of any provision of the Constitution or laws of the United States or any State or political subdivision

with respect to discrimination in voting on account of race or color. 42 U.S.C. 1973b(a)(3). Finally, the political subdivision must provide public notice of its intent to seek a Section 4(a) declaratory judgment. 42 U.S.C. 1973b(a)(4).

The Defendant United States has conferred with the Plaintiff City of Fairfax and, upon investigation, has agreed that the Plaintiff is entitled to the requested declaratory judgment. 42 U.S.C. 1973b(a)(9). The parties have filed a joint motion, accompanied by a Stipulation of Facts, for entry of this Consent Judgment and Decree.

FINDINGS

Pursuant to the parties' Stipulations and joint motion, this Court finds as follows:

1. The Plaintiff City of Fairfax, as an independent city in the State of Virginia, is a political subdivision of a state within the meaning of Section 4(a) of the Voting Rights Act, 42 U.S.C. 1973b(a)(1). See Stipulation of Facts, Par. 1.

2. There is no separate governmental unit within the territory of the City of Fairfax. See Stipulation of Facts, Par. 2.

3. No discriminatory test or device has been used by the City of Fairfax during the ten years prior to the commencement of this action for the purpose or with the effect of denying or abridging the right to vote on account of race or color. See Stipulation of Facts, Par. 19.

4. No court of the United States has issued a final judgment during the ten years prior to the commencement of this action that the right to vote has been denied or abridged on account of race or color in the City of Fairfax, and no consent decree, settlement, or agreement has been entered into resulting in any abandonment of a voting practice challenged on such grounds during that time. No such claims presently are pending or were pending at the time this action was filed. See Stipulation of Facts, Par. 20-21.

5. No Federal examiners have been assigned to the City of Fairfax. See Stipulation of Facts, Par. 24.

6. The City of Fairfax has complied with Section 5 of the Voting Rights Act during the ten year period prior to commencement of this action, during which time the City of Fairfax did not enforce any voting changes without first obtaining Section 5 preclearance. See Stipulation of Facts, Par. 14.

7. All voting changes submitted by the City of Fairfax under Section 5 have been precleared by the Attorney General. The City of Fairfax never has sought Section 5 judicial preclearance from this Court. No Section 5 submissions by the City of Fairfax presently are pending before the Attorney General. See Stipulation of Facts, Par. 14.

8. The City of Fairfax is not employing voting procedures or methods of election which inhibit or dilute equal access to

the electoral process by its minority citizens. See Stipulation of Facts, Par. 23.

9. There is no indication that any persons in the City of Fairfax have been subject to intimidation or harassment in the course of exercising their right to participate in the political process. See Stipulation of Facts, Par. 24.

10. The City of Fairfax has engaged in constructive efforts, such as expanded opportunity for convenient registration and voting for every person of voting age, and the appointment of minority persons as election officials throughout the jurisdiction and at all stages of the election and registration process. See Stipulation of Facts, Par. 15, 17-18.

11. Because the City of Fairfax does not record the race of its registered voters, it is unable to present evidence directly measuring minority voter participation but has provided evidence of voter participation to the extent possible. See Stipulation of Facts, Par. 5.

12. The City of Fairfax has not within the ten years prior to commencement of this action engaged in violations of any provision of the Constitution or laws of the United States or any State or political subdivision with respect to discrimination in voting on account of race or color. See Stipulation of Facts, Par. 19, 22.

13. The City of Fairfax has publicized the intended commencement and proposed settlement of this action in the media and in appropriate United States post offices as required under

42 U.S.C. 1973b(a)(4). See Stipulation of Facts, Par. 26. No aggrieved party has sought to intervene in this action pursuant to 42 U.S.C. 1973b(a)(4).

Accordingly, it is hereby ORDERED, ADJUDGED, and DECREED:

A. The Plaintiff City of Fairfax, Virginia is entitled to a declaratory judgment in accordance with Section 4(a)(1) of the Voting Rights Act, 42 U.S.C. 1973b(a)(1);

B. The parties' Joint Motion for Entry of Consent Judgment and Decree is GRANTED, and the City of Fairfax, Virginia, including the Fairfax City School Board, henceforth shall be exempt from coverage pursuant to Section 4(b) of the Voting Rights Act, 42 U.S.C. 1973b(b), provided that this Court shall retain jurisdiction over this matter for a period of ten years. This action shall be closed and placed on this Court's inactive docket, subject to being reactivated upon application by either the Attorney General or any aggrieved person in accordance with the procedures set forth in 42 U.S.C. 1973b(a)(5).

C. The parties shall bear their own costs.

Entered this 31st day of October 1997.

UNITED STATES CIRCUIT JUDGE

UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT JUDGE

Approved as to form and content:

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IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF COLUMBIA

FREDERICK COUNTY, VIRGINIA, a political subdivision of the Commonwealth of Virginia, 107 North Kent Street, Winchester, VA 22601-5000 Plaintiff, v. JANET RENO, Attorney General of the United States of America, BILL LANN LEE, Acting Assistant Attorney General, Civil Rights Division, Defendants.	CASE NUMBER 1:99CV00941 JUDGE: Colleen Kollar-Kotelly DECK TYPE: Three Judge Court DATE STAMP: 04/14/99 C.A. No. Three-Judge Court Requested

COMPLAINT

Frederick County alleges that:

1. This is an action brought for declaratory relief pursuant to Section 4 of the Voting Rights Act of 1965, as amended, 42 U.S.C. §1973b (hereinafter "Section 4"). This Court has jurisdiction over this action pursuant to 28 U.S.C. §1343(a)(4), 28 U.S.C. §2201, 42 U.S.C. §1973b, and 42 U.S.C. §1973l(b).

2. Plaintiff Frederick County ("the County") is a political subdivision of the Commonwealth of Virginia. Frederick County, Virginia, is located in the Shenandoah Valley, approximately 80 miles from Washington, DC. The City of Winchester, an independent city and the oldest city west of the Blue Ridge Mountains, is located within Frederick County. City residents of Winchester are not eligible to vote in county elections and county residents are not eligible to vote in City of Winchester elections.

3. The County's governing body is a six-member elected board of supervisors. Five of the county supervisors are elected from single-member district (known as magisterial districts) and one (the chair) is elected at-large. The County Supervisors serve part-time. Staggered terms are used and a plurality win system is in effect.

4. The five supervisorial districts contain a total of 12 polling locations, located conveniently to voters across the County. All polling places are located in public buildings (*e.g.*, public schools, fire halls, etc.) which are completely accessible to physically disabled persons.

5. The County School Board has been elected since 1995, and is elected from the same five districts as those used for the County Board of Supervisors. In addition, a sixth school board member is elected at-large. The change from an appointed to an elected school board was submitted by Frederick County in a timely fashion for Section 5 preclearance to the Department of Justice, and received the necessary approval on July 25, 1994.

6. According to the 1990 census, Frederick County, Virginia has a total population of 45,723. Of this number, 832 persons (or 1.8%) are black and 291 (or 0.6%) are Hispanic. The voting age population, according to the 1990 census, is 33,526. Of this number, 571 (1.7%) are black and 197 (0.5%) are Hispanic.

7. Like other jurisdictions in the Commonwealth of Virginia, Frederick County does not collect or maintain voter registration data by race. Current data show, however, that a significant proportion of the County's voting age population is registered to vote. As of 1998, there were 28,757 registered voters in Frederick County. This number constitutes 85.8 % of the County's 1990 voting age population. The number of registered voters in the County has steadily risen over the last couple of decades. In 1975, for example, there were only 9,892

registered voters in the County. By 1985, the number of registered voters had grown to 14,193. By 1990, the number had risen to 17,313.

8. The number of registered voters in the County has grown significantly in the 1990's. This growth can be explained by two phenomena: first, the post-1990 growth of the County's population; and second, the ease and expanded opportunities to register to vote. Since 1990, the number of registered voters in the County has grown by 66.1% (from 17,313 in 1990 to 28,757 in 1998).

9. As a political subdivision of the Commonwealth of Virginia, the plaintiff County of Frederick has been subject to certain special remedial provisions of the Voting Rights Act, including the provisions of Section 5 of the Act, 42 U.S.C. §1973c. Under Section 5 of the Act, known as the "preclearance" provisions, covered jurisdictions, including Frederick County, are required to seek and obtain preclearance from either this Court or from the United States Attorney General of any change affecting voting, and such preclearance must be obtained prior to implementation.

10. Since its inception in 1965, the Voting Rights Act has allowed the States and political subdivisions, which are subject to these special provisions of the Act, to exempt themselves from coverage under the Act's special remedial provisions, if they can satisfy standards established in the Voting Rights Act. This exemption process is known as "bailout.

11. In 1982, Congress made changes in the exemption or bailout standards of the Act. As amended in 1982, Section 4 of the Voting Rights Act provides that States and political subdivisions covered under the special provisions of the Act are entitled to a declaratory

judgment in this Court granting an exemption or bailout from the Act's special remedial provisions if, during the ten years preceding the filing of the action:

A) no test or device has been used either for the purpose or with the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group, within the State or political subdivision seeking a declaratory judgment;

B) no final judgment has been entered by any court determining that the political subdivision has denied or abridged the right to vote on account of race, color, or membership in a language minority group;

C) no Federal examiners have been assigned to the political subdivision;

D) all governmental units within the political subdivision have complied with the preclearance provisions of Section 5 of the Voting Rights Act, 42 U.S.C. §1973c; and

E) the Attorney General has not interposed any objection to any proposed voting change within the political subdivision and no declaratory judgment has been denied with regard to such a change by this Court under Section 5.

12. As amended in 1982, Section 4 of the Act also requires States and political subdivisions seeking an exemption or bailout from the Act's special provisions to show that, during the pendency of the declaratory judgment action seeking such exemption or bailout:

A) any voting procedure or method of election within the state or political subdivision exists which inhibits or dilutes equal access to the electoral process has been eliminated;

B) constructive efforts have been made by the political subdivision to eliminate any intimidation or harassment of persons exercising rights under the Voting Rights Act; and

C) expanded opportunities for convenient registration and voting exist within the state or political subdivision.

13. For a period that extends at least more than the last ten years, Frederick County has made a timely submission of all changes affecting voting for preclearance review under

Section 5 of the Voting Rights Act. 42 U.S.C. §1973c. Since 1983, over 127 voting changes have been submitted for Section 5 preclearance. The Attorney General has never interposed an objection to any of the County's submitted changes. Since the County has only sought administrative preclearance, the District Court for the District of Columbia has not denied a Section 5 declaratory judgment in any case where Frederick County sought preclearance. The voting changes adopted by the County over the years usually have expanded the opportunity for convenient registration and voting.

14. Voter registration opportunities in the County are readily and equally available to all citizens. The voter registration office for the County is located in Winchester, the County seat and a central location within the County. The voter registration office is office is open from 9 am to 5 p.m. Monday through Friday. Since 1997, the County voter registration office has been staffed with a full-time Registrar and two part-time assistants (one works three days a week and the other works two days per week).

15. Voters in Frederick County may also register by mail, and voter registration applications are available at towns throughout the County. Each town clerk has received training from the County Registrar concerning voter registration procedures. The Frederick County Registrar has made a personal appeal to each post office to permit voter registration applications to be available at post offices throughout the county. All of the post offices agreed. Moreover, each year, the Frederick County Registrar is given the opportunity to teach Government classes at local public high schools to encourage students to become registered and to serve as poll officials. Many young people in Frederick County have become registered as a result of the Registrar's efforts.

16. Frederick County and the City of Winchester have conducted joint voter registration drives intended to register more persons in the County. These registration drives have been advertised in local papers, publications which are readily available to all residents. The County Registrar and the City of Winchester's Registrar have run joint notices in local papers regarding the casting of absentee ballots, election day hours, voter registration hours or drives, and other election and/or voting-related information.

17. The opportunity to become a registered voter in Frederick County is also available under the National Voter Registration Act (the "NVRA") at DMV offices and public assistance agencies in Frederick County. While in past years most voters became registered at the County Board of Registrars or at one of the voter registration locations throughout the County, the implementation of the NVRA in Virginia over the last few years has changed the origin of the great majority of registration applications. Today, most of the County's new registrants register through the DMV and by mail.

18. On a few occasions, black residents of Frederick County have come to the voter registration offices and asked for voter registration applications to distribute at their churches. The Registrar always has provided applications to all persons requesting them and no person has ever been denied a request to obtain voter registration applications.

19. Frederick County also has a three-member Electoral Board pursuant to Virginia state law, and the Electoral Board nominates a roster of persons each February to work as poll workers. The appointment of poll workers is for a one-year term. In 1998, 96 persons served as poll workers officials. Recommendations of persons to be appointed as poll workers originate with the chairs of the local Democratic and Republican parties. Not a single person recommended by a political party chair has ever been rejected by the Electoral Board.

20. Because the County has found it difficult over the years to find enough persons willing to serve as poll officials, the Frederick County Registrar of Voters has actively recruited persons to work at the polls and has even designed a brochure advertising that the County needs help in running elections. Not a single eligible Frederick County resident who has expressed an interest in becoming an election official has ever been denied the opportunity to do so. In addition, in recent years, the State's voter registration applications (including the one used at DMV and public assistance agencies throughout Frederick County) have included a special section soliciting persons to serve as poll officials. In every instance in which a voter has indicated an interest in serving as a poll official on these applications, the Registrar has sent that person's name and address to the Electoral Board for consideration and appointment.

21. Minority voters have served as poll workers in Frederick County. A minority voter has also served as an Assistant Registrar of Voters.

22. No person in Frederick County has been denied the right to vote on account of race, color, or membership in language group since at least the time the Voting Rights Act was enacted in 1965. No "test or device" as defined in the Voting Rights Act (42 U.S.C. §1973b(c)) has been used in Frederick County for at least the preceding ten years.

23. Frederick County has not been the subject of any lawsuit in which it was alleged that a person (or persons) was being denied the right to vote on account of race, color, or membership in a language minority group.

24. No voting standards, practices or procedures have been abandoned by the County or challenged on the grounds that such practices or procedures would have either the purpose or the effect of denying the right to vote on account of race, color, or membership in a language minority group.

25. Frederick County has not employed any voting procedures or methods of election that inhibit or dilute equal access to the electoral process in the County.

26. No Federal examiners have ever been appointed or assigned to Frederick County under Section 3 of the Voting Rights Act, 42 U.S.C. §1973a.

27. There are no known incidents in Frederick County where persons exercising their right to vote at the polls have been intimidated or harassed.

28. The allegations set forth in paragraphs 13 through 27, above, if established, entitle Frederick County to a declaratory judgment under Section 4 of the Voting Rights Act, exempting the County from the special remedial provisions of the Voting Rights Act.

29. Pursuant to 42 U.S. C. §1973b, Frederick County has "publicize[d] the intended commencement and any proposed settlement of [this] action in the media serving [the County] and in the appropriate United States post offices. A description of these publications and postings is set forth in Exhibit A hereto.

WHEREFORE, plaintiff Frederick County respectfully prays that this Court:

A. Convene a three-judge court, pursuant to 28 U.S.C.§2284 and 42 U.S.C. §1973b, to hear and determine the claims raised in plaintiff's complaint;

B. Enter a declaratory judgment that Frederick County is entitled to an exemption or bailout from the special remedial provisions of the Voting Rights Act; and

C. Grant such other relief as may be necessary and proper as the needs of justice may require, including all costs in accordance with 42 U.S.C. §1973_1 (e).

Counsel for Plaintiff:

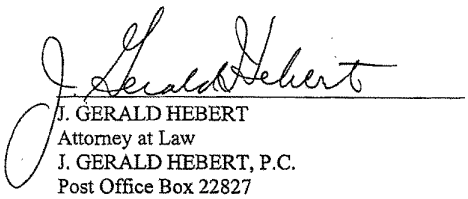

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EXHIBIT A

Frederick County published legal Notices that it intended to commence this bailout action in the *Winchester Star* newspaper on February 19, 20, 26, and 27, 1999; and in the *Northern Virginia Daily* on February 20, 22, 26, and 27, 1999.

In addition, Notices that Frederick County would be seeking this bailout judgment have been continuously posted since February 17-18, 1999, at the following public locations throughout Frederick County: Frederick County Registrar's office, Kent Street, Winchester; Frederick - Winchester Joint Judicial Center, Cameron Street, Winchester; Stephens City Town Hall, Locust Street, Stephens City; and Middletown Town Hall, Church Street, Middletown.

In addition, Notices have also been posted continuously since February 17-18, 1999, at the following United States Postal Service Offices: Downtown Branch, Old Town Mall, Winchester; Gore Branch, Route 50 West (Northwestern Pike), Gore; Cross Junction Branch, Route 522 North (North Frederick Pike), Cross Junction; Clearbrook Branch, Brucetown Road, Clearbrook; and Stephenson Branch, Martinsburg Pike, Stephenson.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FREDERICK COUNTY, VIRGINIA, Plaintiff, v. JANET RENO, Attorney General of the United States of America BILL LANN LEE, Acting Assistant Attorney General, Civil Rights Division, Defendants.	)	C.A. No. 1:99CV00941 (ARR, CK-K, EGS) (three-judge court)

CONSENT JUDGMENT AND DECREE

This action was initiated by Frederick County, a political subdivision of the Commonwealth of Virginia (hereafter "the County"). The County is subject to the provisions of Section 5 of the Voting Rights Act of 1965 as amended. 42 U.S.C. §1973c. The County seeks a declaratory judgment under Section 4 of the Voting Rights Act of 1965, as amended, 42 U.S.C. §1973b. A three-judge court has been convened as provided in 42 U.S.C. §1973b(a)(5) and 28 U.S.C. §2284.

Section 4(A) of the Voting Rights Act provides that a State or political subdivision subject to the special provisions of the Act may be exempted from those provisions if it can demonstrate in an action for a declaratory judgment before the United States District Court for the District of Columbia that it has both 1) complied with the Voting Rights Act during the ten-year period prior to filing the action; and 2) taken positive steps both to encourage minority political participation and to remove

structural barriers to minority electoral influence.

In order to demonstrate compliance with the Voting Rights Act during the ten-year period prior to commencement of a declaratory judgment action under Section 4(a), a political subdivision in Virginia must satisfy five conditions: 1) no test or device may have been used within the political subdivision during that ten-year period for the purpose or with the effect of denying or abridging the right to vote on account of race or color; 2) no court of the United States may have issued a final judgment during that ten-year period that the right to vote has been denied or abridged on account of race or color within the territory of the political subdivision; no consent decree, settlement or agreement may have been entered into during that ten-year period that resulted in the abandonment of a voting practice challenged on such grounds; and no such claims may be pending at the time the declaratory judgment action is commenced; 3) no Federal examiners may have been assigned to the political subdivision during the ten-year period preceding commencement of the declaratory judgment action; 4) the political subdivision and all governments units within its territory must have complied with Section 5 of the Voting Rights Act, 42 U.S.C.§1973c, during that ten-year period, including the requirement that voting changes covered under Section 5 were not enforced without Section 5 preclearance, and that all voting changes denied Section 5 preclearance by the Attorney General or the District Court for the District of Columbia have been repealed; and 5) neither the

Attorney General nor the District Court for the District of Columbia may have denied Section 5 preclearance to a submission by the political subdivision or any governmental unit within its territory during that ten-year period, nor may any Section 5 submissions or declaratory judgment actions be pending. 42 U.S.C. §1973b(a)(1)(A-E).

Also, to obtain the declaratory judgment, a political subdivision and all governmental units within its territory must have eliminated voting procedures and methods of election that inhibit or dilute equal access to the electoral process. 42 U.S.C. §1973b(a)(1)(F)(i). In addition, the political subdivision must have engaged in constructive efforts to eliminate intimidation or harassment of persons exercising voting rights, and to expand the opportunity for convenient registration and voting for every person of voting age, and the appointment of minority persons as election officials throughout the jurisdiction and at all stages of the election and registration process. 42 U.S.C. §1973b(a)(1)(F)(ii-iii).

The political subdivision is required to present evidence of minority participation, including the levels of minority group registration and voting, changes in such levels over time, and disparities between minority group and non-minority group participation. 42 U.S.C. §1973b(a)(2). The political subdivision may not in the preceding ten years have engaged in violations of any provision of the Constitution or laws of the United States or any State or political subdivision with respect

to discrimination in voting on account of race or color. 42 U.S.C. §1973b(a)(3). Finally, the political subdivision must provide public notice of its intent to seek a Section 4(a) declaratory judgment. 42 U.S.C. §1973b(a)(4).

The defendant United States has conferred with Plaintiff Frederick County and, upon investigation, has agreed that the Plaintiff is entitled to the requested declaratory judgment, 42 U.S.C. §1973b(a)(9). The parties have filed a joint motion, accompanied by a Stipulation of Facts, for entry of this Consent Judgment and Decree.

FINDINGS

Pursuant to the parties Stipulations and joint motion, this Court finds as follows:

1. Frederick County is a political subdivision of the Commonwealth of Virginia, and a political subdivision of a state within the meaning of Section 4(a) of the Voting Rights Act, 42 U.S.C. §1973b(a)(1). See Stipulation of Facts, ¶ 1.

2. There are four separate governmental units within Frederick County, including: the Frederick County School Board, the Towns of Middletown and Stephens City, and the Frederick County Shawneeland Sanitary District. See Stipulation of Facts, ¶ 2.

3. No discriminatory test or device has been used by the County during the ten years prior to the commencement of this action for the purpose or with the effect of denying or abridging the right to vote on account of race or color. See Stipulation

of Facts, ¶ 29.

4. No court of the United States has issued a final judgment during the last ten years prior to the commencement of this action that the right to vote has been denied or abridged on account of race or color in Frederick County, and no consent decree, settlement, or agreement has been entered into resulting in any abandonment of a voting practice challenged on such grounds during that time. No such claims presently are pending or were pending at the time this action was filed. See Stipulation of Facts, ¶ 30.

5. No Federal Examiners have been to Frederick County. See Stipulation of Facts, ¶ 34.

6. Frederick County and the governmental units within the County have complied with Section 5 of the Voting Rights Act during the ten-year period preceding this action, except that, with respect to the Shawneeland Sanitary District, which was created in 1987, the United States and the County disagree as to whether any voting changes were enforced before the district received Section 5 preclearance in 1999. See Stipulation of Facts, ¶ 18.

7. All voting changes submitted by the County under Section 5 have been precleared by the Attorney General. No Section 5 submissions by Frederick County presently are pending before the Attorney General. Frederick County has never sought Section 5 judicial preclearance from this court. See Stipulation of Facts, ¶ 19.

8. The County is not employing voting procedures or methods of election which inhibit or dilute equal access to the electoral process by its minority citizens. See Stipulation of Facts, ¶ 33.

9. There is no indication that any persons in the County have been subject to intimidation or harassment in the course of exercising their right to participate in the political process. See Stipulation of Facts, ¶ 35.

10. The County has engaged in constructive efforts, such as expanded opportunity for convenient registration and voting for every person of voting age, and the appointment of minority persons as election officials throughout the jurisdiction and at all stages of the election and registration process. See Stipulation of Facts, ¶¶ 20-23, 25-27.

11. Because Frederick County does not record the race of its registered voters, it is unable to present evidence directly measuring minority voter participation, but the County has provided evidence of voter participation to the extent possible. See Stipulation of Facts, ¶ 8.

12. The County has not within the ten years prior to the commencement of this action engaged in violations of the Constitution or laws of the United States or any State or political subdivision with respect to discrimination in voting on account of race or color. See Stipulation of Facts, ¶ 32.

13. Frederick County has publicized the intended commencement and proposed settlement of this action in the media

and in appropriate United States post offices as required under 42 U.S.C. §1973b(a)(4). See Stipulation of Facts, ¶ 36. No aggrieved party has sought to intervene in this action pursuant to 42 U.S.C. §1973b(a)(4).

Accordingly, it is hereby ORDERED, ADJUDGED and DECREED:

A. The plaintiff Frederick County, Virginia, is entitled to a declaratory judgment in accordance with Section 4(a)(1) of the Voting Rights Act, 42 U.S.C. §1973b(a)(1);

B. The parties' Joint Motion for Entry of Consent Judgment and Decree is GRANTED, and Frederick County, including the Frederick County School Board, the Towns of Middletown and Stephens City, and the Frederick County Shawneeland Sanitary District, shall be exempt from coverage pursuant to Section 4(b) of the Voting Rights Act, 42 U.S.C. §1973b(b), provided that this Court shall retain jurisdiction over this matter for a period of ten years. This action shall be closed and placed on this Court's inactive docket, subject to being reactivated upon application by either the Attorney General or any aggrieved person in accordance with the procedures set forth in 42 U.S.C. §1973b(a)(5).

C. The parties shall bear their own costs.

Entered this 8 day of September 1999.

UNITED STATES CIRCUIT JUDGE

UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT JUDGE

Approved as to form and content:

For the Plaintiff Frederick County, Virginia

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WILMA A. LEWIS
United States Attorney

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

GREENE COUNTY, VIRGINIA,
a political subdivision of the
Commonwealth of Virginia,
Administration Building,
40 Celt Road, Stanardsville, Virginia 22973

Plaintiff,

v.

JOHN D. ASHCROFT, Attorney General
of the United States of America,
R. ALEXANDER ACOSTA, Assistant
Attorney General, Civil Rights
Division, United States Department
of Justice, Washington, D.C.,

Defendants.

CASE NUMBER 1:03CV01877
JUDGE: Henry H. Kennedy
DECK TYPE: 3-Judge Court
DATE STAMP: 09/08/2003

COMPLAINT

1. This is an action brought for declaratory relief pursuant to Section 4 of the Voting Rights Act of 1965, as amended, 42 U.S.C. §1973b (hereinafter "Section 4"). This Court has jurisdiction over this action pursuant to 28 U.S.C. §1343(a)(4), 28 U.S.C. §2201, 42 U.S.C. §1973b, and 42 U.S.C. §1973l(b).

2. Plaintiff Greene County ("the County") is a political subdivision of the Commonwealth of Virginia. Located in the north-central portion of Virginia, Greene County is approximately 100 miles southwest of Washington, DC, 20 miles north of Charlottesville, Virginia on US 29, and about 90 miles east of Richmond.

3. Governmental units within Greene County include the Greene County Board of Supervisors, Greene County School Board, and the Stanardsville Town Council.

4. Greene County is governed by a five-member Board of Supervisors. Three of the supervisors are elected from single-member districts and two are elected at-large. Staggered terms are used and a plurality win system is in effect. The supervisors serve four-year terms and are elected biannually in odd-numbered years, with terms staggered such that three supervisors are elected at one time and two supervisors are elected two years later. See Va. Stat. §§ 24.2-218 and 24.2-219. The Board's Chair and Vice-Chair are selected by the other supervisors.

5. By referendum vote on November 8, 1994, Greene County voters elected to move from an appointed to an elected School Board. The five members of the School Board are now elected from the same three districts as the Board of Supervisors, with two elected at-large and a plurality win system in effect. Board members serve four-year terms, with the same method of staggered terms as used for supervisor elections. See Va. Stat. § 24.2-223. Greene County School Board elections are non-partisan.

6. The Town of Stanardsville has a mayor-council form of government. There are four members of the Stanardsville Town Council, who are elected at-large by plurality vote, and a mayor. The mayor only votes to break a tie. Elections are held in even numbered years every two years. The term of office for mayor is two years and council members serve four year terms. See Va. Stat. § 24.2-222. These elections are non-partisan.

7. There are four voting precincts in Greene County for purposes of electing the County Board of Supervisors and School Board. The polling places are located in the Dyke Firehouse, Greene County Vocation Center, Ruckersville Firehouse, and the Courthouse on Court Square in

Stanardsville.

8. According to the 2000 Census, Greene County has a total population of 15,244 persons, of whom 13,769 (90.3%) are white; 983 (6.4%) are black, and 201 (1.3%) are Hispanic. The total voting age population is 11,070 persons, of whom 10,125 (91.5%) are white; 664 (6.0%) are black, and 126 (1.1%) are Hispanic. According to the 2000 census, the Town of Stanardsville has a population of 476, of whom 41 (8.6%) are black and 4 (0.8%) are Hispanic. The total voting age population of the town is 365 people, of whom 31 (8.5%) are black and 1 (0.3%) is Hispanic.

9. Like other jurisdictions in the Commonwealth of Virginia, Greene County does not collect or maintain voter registration data by race. The numbers countywide, irrespective of race, however, are encouraging. Since 1990, registration in the County has more than doubled, from 4,335 in 1990 to 8,742 in 2002. Today, 79.0 percent (8,742 of 11,070) of the County's voting age population are registered voters.

10. Voters may register in person at the Registrar's Office in the County Administration Building between 9 a.m. and 5 p.m. Monday through Friday. Voters also may register at the Department of Motor Vehicles. Voter registration applications are available at the Greene County library, Greene County Clerk of Court's office, Bank of America in Stanardsville, Snow's Merchandise store in Dyke, and the administration office of the County School Board. The registrar's office will mail registration applications upon request. At least once a year, the registrar's office registers seniors at the high school. Civic organizations also conduct registration drives. The registrar's office gives these organizations registration forms and advises the participants on how registrants are to fill out the forms. The registrar's office has not conducted registration drives.

11. As a political subdivision of the Commonwealth of Virginia, plaintiff Greene County has been subject to certain special remedial provisions of the Voting Rights Act, including the provisions of Section 5 of the Act, 42 U.S.C. §1973c. Under Section 5 of the Act, known as the "preclearance" provisions, covered jurisdictions, including Greene County, are required to seek and obtain preclearance from either this Court or from the United States Attorney General of any change affecting voting, and such preclearance must be obtained prior to implementation.

12. Since its inception in 1965, the Voting Rights Act has allowed the States and political subdivisions, which are subject to these special provisions of the Act, to exempt themselves from coverage under the Act's special remedial provisions, if they can satisfy standards established in the Voting Rights Act.

13. In 1982, Congress made changes in the exemption standards of the Act. As amended in 1982, Section 4 of the Voting Rights Act provides that States and political subdivisions covered under the special provisions of the Act are entitled to a declaratory judgment in this Court granting an exemption from the Act's special remedial provisions if, during the ten years preceding the filing of the action:

> A) no test or device has been used either for the purpose or with the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group, within the State or political subdivision seeking a declaratory judgment;
> B) no final judgment has been entered by any court determining that the political subdivision has denied or abridged the right to vote on account of race, color, or membership in a language minority group;
> C) no Federal examiners have been assigned to the political subdivision;
> D) all governmental units within the political subdivision have complied with the preclearance provisions of Section 5 of the Voting Rights Act, 42 U.S.C. 1973c; and
> E) the Attorney General has not interposed any objection to any proposed voting change within the political subdivision and no declaratory judgment has been denied with regard to such a change by this Court under Section 5.

14. As amended in 1982, Section 4 of the Act also requires States and political subdivisions seeking an exemption from the Act's special provisions to show that, during the pendency of the declaratory judgment action seeking such exemption:

> A) Any voting procedure or method of election within the state or political subdivision exists which inhibits or dilutes equal access to the electoral process has been eliminated;
> B) Constructive efforts have been made by the political subdivision to eliminate any intimidation or harassment of persons exercising rights under the Voting Rights Act; and
> C) Expanded opportunities for convenient registration and voting exists within the State or political subdivision.

15. As described in each of the paragraphs set forth below, Greene County has fully complied with the provisions of Section 4 of the Act as set forth in paragraphs 13 and 14, *supra*.

16. Over the years, Greene County has made numerous submissions to the Department of Justice seeking preclearance of voting changes under Section 5 of the Voting Rights Act. For example, in the preceding ten years, Greene County has made 25 Section 5 submissions of changes affecting voting for preclearance review under Section 5 of the Voting Rights Act. 42 U.S.C. §1973c. The defendant Attorney General has approved each and every voting change that has been submitted by the County for preclearance under the Voting Rights Act. Since passage of the Voting Rights Act in 1965, not a single objection has been interposed by the Department of Justice to any voting change in Greene County. In approving each and every change, the defendants have concluded that the voting changes submitted were free of a racially discriminatory purpose or a racially discriminatory effect. Many of the voting changes made over the years in Greene County and submitted for Section 5 preclearance actually expanded the opportunities for County residents to become registered voters and to cast ballots.

17. Greene County has a three-member Electoral Board appointed by the County Circuit Court judge. The Electoral Board is responsible for conducting elections and appointing the

Voter Registrar. Historically, the chairs of the local Democratic and Republican parties forward names to the Voter Registrar to be appointed as poll officials by the Electoral Board. The appointment of poll officials is for a one-year term. Currently, none of the members on the Electoral Board is a member of a racial minority group. No person recommended by a political party chair to serve as a poll official ever has been rejected by the Electoral Board.

18. In recent years, the local political parties have not made recommendations to the Electoral Board for poll officials. Because Greene County has found it difficult over the years to find enough persons willing to serve as poll officials, the county registrar has actively recruited persons to work at the polls, including adding a section to voter registration materials soliciting registrants to serve as poll officials as well as making calls to residents to inquire as to their availability to serve as poll officials. There is no indication in the preceding ten years that any eligible Greene County resident who has expressed an interest in becoming an election official has been denied the opportunity to serve. The registrar forwards the names of voters indicating an interest in serving as a poll official to the Electoral Board for consideration and appointment.

19. Although the number of minority citizens in Greene County is quite small, minority citizens have nonetheless played some role in the political process. For example, Greene County currently employs 24 poll workers, one of whom, Booker Hill of Ruckersville, is black. In addition, Wayne Berry, who is black, unsuccessfully ran for Greene County Sheriff in 1995 against the incumbent Sheriff, William Morris. Berry garnered over 37% of the vote, however Currently, Janet Frye, who is black, is a member of the Board of Zoning Appeals, a board appointed by the Circuit Court Judge.

20. No person in Greene County has been denied the right to vote on account of race, color, or membership in language group since at least the time the Voting Rights Act was enacted in 1965.

21. No "test or device" as defined in the Voting Rights Act (42 U.S.C. §1973b(c)) has been used in Greene County as a prerequisite to either registering or voting for at least the preceding ten years.

22. Greene County has never been the subject of any lawsuit in which it was alleged that a person (or persons) was being denied the right to vote on account of race, color, or membership in a language minority group.

23. No voting practices or procedures have been abandoned by the County or challenged on the grounds that such practices or procedures would have either the purpose or the effect of denying the right to vote on account of race, color, or membership in a language minority group.

24. Greene County has not employed any voting procedures or methods of election that inhibit or dilute equal access to the electoral process by minority voters in the County. Under the County's current election method, minority voters are not being denied an equal opportunity to elect candidates of their choice to the County Board of Supervisors, to the County School Board, or any of the Town governmental bodies.

25. Federal examiners have never been appointed or assigned to Greene County under Section 3 of the Voting Rights Act, 42 U.S.C. §1973a.

26. There are no known incidents in Greene County where any person exercising his or her right to vote has been intimidated or harassed at the polls (or while attempting to register to vote).

27. The allegations set forth in paragraphs 2-10 and 16-26, above, if established, entitle Greene County to a declaratory judgment under Section 4 of the Voting Rights Act, 42 U.S.C. §1973b, exempting the County and the governmental units within the County from the special remedial provisions of the Voting Rights Act.

28. Pursuant to 42 U.S.C. §1973b, Greene County has "publicize[d] the intended commencement ...of [this] action in the media serving [the County] and in the appropriate United States post offices." Greene County has publicized the intended filing of this action prior to its commencement in local newspapers of general circulation and in appropriate United States post offices throughout the County in accordance with 42 U.S.C. §1973b(a)(4). Greene County issued a notice regarding the proposed bailout on October 18, 2001. The County published notice at the Registrar's office and in the Greene County Record in the October 18 and October 25, 2001 editions. In addition, the County posted copies of the notice in other public locations, including the County Courthouse and the Voter Registrar's Office.

WHEREFORE, plaintiff Greene County respectfully prays that this Court:

A. Convene a three-judge court, pursuant to 28 U.S.C.§2284 and 42 U.S.C. §1973b, to hear the claims raised in plaintiff's complaint;

B. Enter a declaratory judgment that Greene County is entitled to a bailout from the special remedial provisions of the Voting Rights Act; and

C. Grant such other relief as may be necessary and proper as the needs of justice may require.

For Plaintiff Greene County:

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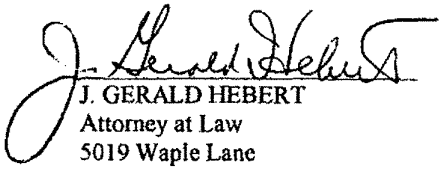

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IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

GREENE COUNTY, VIRGINIA,
a political subdivision of the
Commonwealth of Virginia,

Plaintiff,

v.

CIVIL ACTION 03-1877

JOHN D. ASHCROFT, Attorney General
of the United States of America,
R. ALEXANDER ACOSTA, Assistant
Attorney General, Civil Rights
Division, United States Department
of Justice, Washington, D.C.,

Defendants.

CONSENT JUDGMENT AND DECREE

This action was initiated by Greene County, a political subdivision of the Commonwealth of Virginia (hereafter "the County"). The County is subject to the provisions of Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. §1973c. The County seeks a declaratory judgment under Section 4 of the Voting Rights Act of 1965, as amended, 42 U.S.C. §1973b. A three-judge court has been convened as provided in 42 U.S.C. §1973b(a)(5) and 28 U.S.C. §2284.

Section 4(a) of the Voting Rights Act provides that a state or political subdivision subject to the special provisions of the Act may be exempted from those provisions if it can demonstrate in an action for a declaratory judgment before the United States District Court for the District of Columbia that for the ten-year period prior to filing the action and during its pendency, it has both 1) complied with the Voting Rights Act and 2) taken positive steps both to encourage minority political participation and to remove structural barriers to minority electoral influence.

In order to demonstrate compliance with the Voting Rights Act during the ten-year period prior to commencement of a declaratory judgment action under Section 4(a), the County must

satisfy five conditions:

1) the County has not used any test or device during that ten-year period for the purpose or with the effect of denying or abridging the right to vote on account of race or color;

2) no court of the United States has issued a final judgment during that ten-year period that the right to vote has been denied or abridged on account of race or color within the territory of the County, and no consent decree, settlement or agreement may have been entered into during that ten-year period that resulted in the abandonment of a voting practice challenged on such grounds; and no such claims may be pending at the time the declaratory judgment action is commenced;

3) no Federal examiners have been assigned to the County pursuant to the Voting Rights Act during the ten-year period preceding commencement of the declaratory judgment action;

4) the County and all governmental units within its territory must have complied with Section 5 of the Voting Rights Act, 42 U.S.C.§1973c, during that ten-year period, including the requirement that voting changes covered under Section 5 not be enforced without Section 5 preclearance, and that all voting changes denied Section 5 preclearance by the Attorney General or the District Court for the District of Columbia have been repealed; and

5) neither the Attorney General nor the District Court for the District of Columbia have denied Section 5 preclearance to a submission by the County or any governmental unit within its territory during that ten-year period, nor may any Section 5 submissions or declaratory judgment actions be pending. 42 U.S.C. §1973b(a)(1)(A-E).

In addition, to obtain the declaratory judgment, the County and all governmental units within its territory must have:

1) eliminated voting procedures and methods of election that inhibit or dilute equal access to the electoral process,42 U.S.C. §1973b(a)(1)(F)(i); and

2) engaged in constructive efforts to eliminate intimidation or harassment of persons

exercising voting rights, and to expand the opportunity for convenient registration and voting for every person of voting age, and the appointment of minority persons as election officials throughout the jurisdiction and at all stages of the election and registration process,42 U.S.C. §1973b(a)(1)(F)(ii-iii).

The County is required to present evidence of minority participation in the electoral process, including the levels of minority group registration and voting, changes in such levels over time, and disparities between minority group and non-minority group participation. 42 U.S.C. §1973b(a)(2). In the ten years preceding bailout, the County must not have engaged in violations of any provision of the Constitution or laws of the United States or any State or political subdivision with respect to discrimination in voting on account of race or color. 42 U.S.C. §1973b(a)(3). Finally, the County must provide public notice of its intent to seek a Section 4(a) declaratory judgment. 42 U.S.C. §1973b(a)(4).

The Defendant United States, after investigation, has agreed that the Plaintiff has fulfilled all conditions required by Section 4(a) and is entitled to the requested declaratory judgment, subject to annual reporting requirements for a period of two years to which the parties have agreed as a basis for resolving this action. 42 U.S.C. §1973b(a)(9). The parties have filed a joint motion, accompanied by a Stipulation of Facts, for entry of this Consent Judgment and Decree.

FINDINGS

Pursuant to the parties' stipulations and joint motion, this Court finds as follows:

1. Greene County is a political subdivision of the Commonwealth of Virginia, and a political subdivision of a state within the meaning of Section 4(a) of the Voting Rights Act, 42 U.S.C. §1973b(a)(1).

2. Governmental units within Greene County include the Greene County Board of Supervisors, Greene County School Board, and the Stanardsville Town Council.

3. Greene County is a covered jurisdiction subject to the special provisions of the Voting Rights Act, including Section 5 of the Act, 42 U.S.C. § 1973c.

4. Greene County was designated as a jurisdiction subject to the special provisions of the Voting Rights Act on the basis of the determinations made by the Attorney General that Virginia maintained a "test or device" as defined by section 4(b) of the Act, 42 U.S.C. § 1973b(b), on November 1, 1964, and by the Director of the Census that fewer than 50 percent of the persons of voting age residing in the state voted in the 1964 presidential election.

5. No discriminatory test or device has been used by Greene County during the ten years prior to the commencement of this action for the purpose or with the effect of denying or abridging the right to vote on account of race or color.

6. No person in Greene County has been denied the right to vote on account of race or color during the past ten years.

7. No court of the United States has issued a final judgment during the last ten years prior to the commencement of this action that the right to vote has been denied or abridged on account of race or color in Greene County, and no consent decree, settlement, or agreement has been entered into resulting in any abandonment of a voting practice challenged on such grounds during that time. No such claims presently are pending or were pending at the time this action was filed.

8. No Federal Examiners have been assigned to Greene County within the ten-year period preceding this action.

9. Greene County and its governmental units have enforced only one voting change prior to receiving Section 5 preclearance during the ten-year period preceding this action. That voting change has since been submitted and precleared.

10. All voting changes submitted by Greene County and its governmental units under Section 5 have been precleared by the Attorney General. No Section 5 submissions by the County or its governmental units presently are pending before the Attorney General. The County

and its governmental units have never sought Section 5 judicial preclearance from this Court.

11. No voting practices or procedures have been abandoned by Greene County or challenged on the grounds that such practices or procedures would have either the purpose or the effect of denying the right to vote on account of race or color during the ten-year period preceding this action.

12. Greene County does not employ voting procedures or methods of election which inhibit or dilute equal access to the electoral process by the County's minority citizens.

13. There is no indication that in the past ten years any persons in Greene County have been subject to intimidation or harassment in the course of exercising their right to participate in the political process.

14. Greene County and its governmental units have not engaged in constructive efforts to eliminate intimidation and harassment of persons exercising rights protected under the Voting Rights Act because there is no evidence that any such incidents have occurred in the County in the last ten years.

15. Greene County has engaged in constructive efforts to enhance registration and voting opportunities for all of its citizens of voting age by adding hours during which to register to vote and polling locations at which to vote.

16. Since Greene County does not record the race of its registered voters, it is unable to present evidence directly measuring minority voter participation, but the County has provided evidence of voter participation for elections since 1990. Turnout has been highest in Greene County in presidential election years. In the election years of 1992, 1996, and 2000, county voter turnout was 83.2%, 71.3%, and 68.7% respectively.

17. Greene County has not engaged, within the ten years prior to the commencement of this action, in violations of the Constitution or laws of the United States or any State or political subdivision with respect to discrimination in voting on account of race or color.

18. Greene County has publicized the intended commencement and proposed settlement of this action in the media and in appropriate United States post offices as required under 42 U.S.C. §1973b(a)(4). No aggrieved party has sought to intervene in this action pursuant to 42 U.S.C. §1973b(a)(4).

19. As a basis for resolving this action, the parties have agreed that Greene County will be subject to annual reporting requirements for a period of two years. As part of an effort to increase participation of its African-American citizens as election officials, the County will include in its annual reports a by-election tally of how many African-Americans have served as election officials and a detailing of efforts to recruit African-Americans as election officials. Such efforts may include working with leaders in the African-American community, including holders of and candidates for public office, and churches and other organizations whose congregations and members are primarily comprised of African-American persons. In making this request, the United States recognizes that not many African-Americans reside in the County. In addition, the annual reports shall include the County's most recent registration figures, by precinct. The first report will be due one year from the date of entry of this Consent Order and Decree; the second report shall be due one year from the date of submission of the preceding report.

Accordingly, it is hereby ORDERED, ADJUDGED and DECREED:

The Plaintiff, Greene County, Virginia is entitled to a declaratory judgment in accordance with Section 4(a)(1) of the Voting Rights Act, 42 U.S.C. §1973b(a)(1);

The parties' Joint Motion for Entry of Consent Judgment and Decree is GRANTED, and Greene County, including the Greene County School Board and the town of Stanardsville, shall be exempt from coverage pursuant to Section 4(b) of the Voting Rights Act, 42 U.S.C. §1973b(b), provided that Greene County be subject to annual reporting requirements as provided in paragraph 19, and provided that this Court shall retain jurisdiction over this matter for a period of ten years. This

action shall be closed and placed on this Court's inactive docket, subject to being reactivated upon application by either the Attorney General or any aggrieved person in accordance with the procedures set forth in 42 U.S.C. §1973b(a)(5).

The parties shall bear their own costs.

John G. Roberts, Jr.
UNITED STATES CIRCUIT JUDGE

Henry H. Kennedy, JR
UNITED STATES DISTRICT JUDGE

Rosemary M. Collyer
UNITED STATES DISTRICT JUDGE

Date: January 19, 2004

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF COLUMBIA

CITY OF HARRISONBURG, VIRGINIA, a political subdivision of the Commonwealth of Virginia, 345 South Main Street, Harrisonburg, Virginia 22801,	
Plaintiff,	CASE NUMBER 1:02CV00289
v.	JUDGE: John D. Bates
	DECK TYPE: 3-Judge Court
JOHN ASHCROFT, Attorney General of the United States of America, RALPH F. BOYD, JR., Assistant Attorney General, Civil Rights Division, United States Department of Justice, Washington, DC,	DATE STAMP: 02/14/2002
Defendants.	Three-Judge Court Requested

COMPLAINT

The City of Harrisonburg alleges that:

1. This is an action brought for declaratory relief pursuant to Section 4 of the Voting Rights Act of 1965, as amended, 42 U.S.C. §1973b (hereinafter "Section 4"). This Court has jurisdiction over this action pursuant to 28 U.S.C. §1343(a)(4), 28 U.S.C. §2201, 42 U.S.C. §1973b, and 42 U.S.C. §1973l(b).

2. Plaintiff the City of Harrisonburg ("the City") is a political subdivision of the Commonwealth of Virginia. The City of Harrisonburg, Virginia, is located in the Shenandoah Valley, approximately 100 miles from Washington, DC.

3. The City of Harrisonburg, an independent city, is located within Rockingham County. City residents of Harrisonburg are not eligible to vote in County elections and County residents are not eligible to vote in City of Harrisonburg elections.

4. The Harrisonburg City Council is the governing body that formulates policies for the administration of the City of Harrisonburg. It is comprised of five members elected on an at-large basis to serve four-year terms. The City Council appoints a City Manager to serve as the City's chief administrative officer. The council meets every second and fourth Tuesday of each month, except on holidays.

5. The council districts contain a total of 5 polling locations, located conveniently to voters across the City. All polling places are located in public buildings (e.g., public schools, fire halls, etc.).

6. The only other governmental unit operating within the City of Harrisonburg is the Harrisonburg City School Board (hereafter, "School Board"). The City School Board is a six-member body and since 1996 has been elected from two multimember districts. Effective in 2002, four members of the school board will be elected from the east district and two members will be elected from the west district. The change from an appointed to an elected school board was submitted by the City of Harrisonburg in a timely fashion for Section 5 preclearance to the Department of Justice, and received the necessary approval. Similarly, the City School Board's 2001 redistricting plan received the requisite Section 5 preclearance from the defendant Attorney General.

7. According to the 2000 census, the City of Harrisonburg, Virginia has a total population of 40,468. Of this number, 2394 persons (or 5.9%) are black and 3580 (or 8.8 %) are Hispanic. The voting age population of the City, according to the 2000 census, is 34,231. Of this number, 1875 (5.5%) are black and 2476 (7.2%) are Hispanic.

8. Like other jurisdictions in the Commonwealth of Virginia, the City of Harrisonburg does not collect or maintain voter registration data by race. As of November 2000, there were 15,379 registered voters in the City of Harrisonburg. The number of registered voters in the City has steadily risen over the last couple of decades. In 1980, for example, there were only 6,948 registered voters in the City. By 1985, the number of registered voters had grown to 9,096. By 1991, the number had risen to 10,101.

9. The number of registered voters in the City has grown significantly in the 1990's. From 1991 to 2000, the number of registered voters in the City has swelled by 66% (from 10,101 in 1991 to 15,379 in 2000).

10. Voter turnout in elections varies according to the offices up for election. In the two most recent Presidential elections, for example, approximately 73% (November 1996) and 65% (November 2000) of the City's electorate turned out to vote. In the General Election for Governor held in November 2001, 42.3% of the City's registered voters turned out to vote. Voter turnout for Harrisonburg City Council elections in the last five cycles (1992, 1994, 1996, 1998, and 2000) has been 37.8%, 31.1%, 33.6%, 10.3%, and 38.8%, respectively.

11. As a political subdivision of the Commonwealth of Virginia, plaintiff City of Harrisonburg has been subject to certain special remedial provisions of the Voting Rights Act, including the provisions of Section 5 of the Act, 42 U.S.C. §1973c. Under Section 5 of the Act, known as the "preclearance" provisions, covered jurisdictions, including the City of Harrisonburg, are required to seek and obtain preclearance from either this Court or from the United States Attorney General of any change affecting voting, and such preclearance must be obtained prior to implementation.

12. Since its inception in 1965, the Voting Rights Act has allowed the States and political subdivisions, which are subject to these special provisions of the Act, to exempt themselves from coverage under the Act's special remedial provisions, if they can satisfy standards established in the Voting Rights Act.

13. In 1982, Congress made changes in the exemption standards of the Act. As amended in 1982, Section 4 of the Voting Rights Act provides that States and political subdivisions covered under the special provisions of the Act are entitled to a declaratory judgment in this Court granting an exemption from the Act's special remedial provisions if, during the ten years preceding the filing of the action:

> A) no test or device has been used either for the purpose or with the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group, within the State or political subdivision seeking a declaratory judgment;
> B) no final judgment has been entered by any court determining that the political subdivision has denied or abridged the right to vote on account of race, color, or membership in a language minority group;
> C) no Federal examiners have been assigned to the political subdivision;
> D) all governmental units within the political subdivision have complied with the preclearance provisions of Section 5 of the Voting Rights Act, 42 U.S.C. 1973c; and
> E) the Attorney General has not interposed any objection to any proposed voting change within the political subdivision and no declaratory judgment has been denied with regard to such a change by this Court under Section 5.

14. As amended in 1982, Section 4 of the Act also requires States and political subdivisions seeking an exemption from the Act's special provisions to show that, during the pendency of the declaratory judgment action seeking such exemption:

> A) Any voting procedure or method of election within the state or political subdivision exists which inhibits or dilutes equal access to the electoral process has been eliminated;
> B) Constructive efforts have been made by the political subdivision to eliminate any intimidation or harassment of persons exercising rights under the Voting Rights Act; and
> C) Expanded opportunities for convenient registration and voting exists within the State or political subdivision.

15. As described in each of the paragraphs set forth below, the City of Harrisonburg has fully complied with the provisions of Section 4 of the Act as set forth in paragraphs 13 and 14, *supra*.

16. Over the years, the City of Harrisonburg has made numerous submissions to the Department of Justice seeking preclearance of voting changes under Section 5 of the Voting Rights Act. Since 1983, for example, the City has made a timely submission of nearly 300 voting changes to the Department of Justice for Section 5 preclearance.

The defendant Attorney General has approved each and every voting change that has been submitted by the City for preclearance under the Voting Rights Act. Since passage of the Voting Rights Act in 1965, not a single objection has been interposed by the Department of Justice to any voting change in the City of Harrisonburg. In approving each and every change, the defendants have concluded that the voting changes submitted were free of a

racially discriminatory purpose or a racially discriminatory effect. Many of the voting changes made over the years in the City of Harrisonburg and submitted for Section 5 preclearance actually expanded the opportunities for City residents to become registered voters and to cast ballots.

18. Voter registration opportunities in the City are readily and equally available to all citizens. The voter registration office for the City is located in downtown Harrisonburg, a central and convenient location for City residents. The voter registration office is office is open from 8 a.m. to 5 p.m., Monday through Friday. The City's voter registration office is currently staffed with a full-time General Registrar and 2 part-time assistants. On a number of occasions in recent years, black citizens of Harrisonburg have worked in the voter registration office serving as Volunteer Assistant Voting Registrars.

19. Voters in the City of Harrisonburg may also register by mail, and voter registration applications are available at locations throughout the City.

20. The opportunity to become a registered voter in the City of Harrisonburg is also available under the National Voter Registration Act (the "NVRA") at DMV offices and public assistance agencies in the City of Harrisonburg. While in past years most voters became registered at the City's voter registration office, the implementation of the NVRA in Virginia over the last decade has changed the origin of the great majority of registration applications. Today, most of the City's new registrants register through the DMV and by mail.

21. The City of Harrisonburg's also has a three-member Electoral Board pursuant to Virginia state law, and the Electoral Board nominates a roster of persons each February to work as poll workers. The appointment of poll workers is for a one-year term. Recommendations of persons to be appointed as poll workers originate with the chairs of the local Democratic and Republican parties. Not a single person recommended by a political party chair to serve as a poll official has ever been rejected by the Electoral Board.

22. Because the City has found it difficult over the years to find enough persons willing to serve as poll officials, the City of Harrisonburg General Registrar has actively recruited persons to work at the polls and has even designed brochures seeking qualified persons to serve as poll officials. These brochures are publicly available at the Registrar's office, City offices, and the Commissioner of Revenue and Treasurer's offices. Not a single eligible Harrisonburg resident who has expressed an interest in becoming an election official has ever been denied the opportunity to do so. In addition, in recent years, the State's voter registration applications (including the one used at DMV and public assistance agencies throughout the City of Harrisonburg) have included a special section soliciting persons to serve as poll officials.

23. Minority citizens in Harrisonburg have played an active role in the political process. For example, except for a brief period of 1992-1994, a black citizen has served as an elected member of the Harrisonburg City Council since 1976. Not a single black candidate who has sought election to the Harrisonburg City Council since 1965 has been defeated.

24. Black citizens also have served as poll workers in the City of Harrisonburg. In the November 2000 election, for example, there were 36 poll officials in the City and six (6), or 16.6% were black. Similarly, in the May 2000 election, 5 of the 29 (17.2%) poll workers in the City were black. In the 1999 general election, 4 of 24 (16.6%) poll officials in Harrisonburg were black.

25. No person in the City of Harrisonburg has been denied the right to vote on account of race, color, or membership in language group since at least the time the Voting Rights Act was enacted in 1965.

26. No "test or device" as defined in the Voting Rights Act (42 U.S.C. §1973b(c)) has been used in the City of Harrisonburg as a prerequisite to either registering or voting for at least the preceding ten years.

27. The City of Harrisonburg has never been the subject of any lawsuit in which it was alleged that a person (or persons) was being denied the right to vote on account of race, color, or membership in a language minority group.

28. No voting practices or procedures have been abandoned by the City or challenged on the grounds that such practices or procedures would have either the purpose or the effect of denying the right to vote on account of race, color, or membership in a language minority group.

29. The City of Harrisonburg has not employed any voting procedures or methods of election that inhibit or dilute equal access to the electoral process by minority voters in the City. Under the City's current election method, black voters are not being denied an equal opportunity to elect candidates of their choice to the City Council.

30. Federal examiners have never been appointed or assigned to the City of Harrisonburg under Section 3 of the Voting Rights Act, 42 U.S.C. §1973a.

31. There are no known incidents in the City of Harrisonburg where any person exercising his or her right to vote has been intimidated or harassed at the polls (or while attempting to register to vote).

32. The allegations set forth in paragraphs 16 through 31, above, if established, entitle the City of Harrisonburg to a declaratory judgment under Section 4 of the Voting Rights Act, 42 U.S.C. §1973b, exempting the County from the special remedial provisions of the Voting Rights Act.

33. Pursuant to 42 U.S. C. §1973b, the City of Harrisonburg has "publicize[d] the intended commencement and any proposed settlement of [this] action in the media serving [the City] and in the appropriate United States post offices." The City published legal Notice that it intended to commence this bailout action in the Daily News Record, a daily newspaper of general circulation in and around the City of Harrisonburg on October 23, 2001, and October 31, 2001. In addition, the City posted copies of the Notice at ten (10) locations across the City, including the Main Post Office, the Harrisonburg Post Office Retail Unit, the Courthouse, City Hall, the Registrar's office, and the City library.

WHEREFORE, plaintiff City of Harrisonburg respectfully prays that this Court:

A. Convene a three-judge court, pursuant to 28 U.S.C.§2284 and 42 U.S.C. §1973b, to hear the claims raised in plaintiff's complaint;

B. Enter a declaratory judgment that the City of Harrisonburg is entitled to a bailout from the special remedial provisions of the Voting Rights Act; and

C. Grant such other relief as may be necessary and proper as the needs of justice may require.

For Plaintiff the City of Harrisonburg:

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IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

CITY OF HARRISONBURG, VIRGINIA, a political subdivision of the Commonwealth of Virginia,

Plaintiff,

v.

JOHN D. ASHCROFT, Attorney General of the United States of America, RALPH F. BOYD, JR., Assistant Attorney General, Civil Rights Division, United States Department of Justice, Washington, D.C.,

Defendants.

Case No. 1:02CV00289

Judge: John D. Bates

3-Judge Court

CONSENT JUDGMENT AND DECREE

This action was initiated by the city of Harrisonburg, a political subdivision of the Commonwealth of Virginia (hereafter "the City"). The City is subject to the provisions of Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. §1973c. The City seeks a declaratory judgment under Section 4 of the Voting Rights Act of 1965, as amended, 42 U.S.C. §1973b. A three-judge court has been convened as provided in 42 U.S.C. §1973b(a)(5) and 28 U.S.C. §2284.

Section 4(A) of the Voting Rights Act provides that a state or political subdivision subject to the special provisions of the Act may be exempted from those provisions if it can demonstrate in an action for a declaratory judgment before the United States

District Court for the District of Columbia that it has both 1) complied with the Voting Rights Act during the ten-year period prior to filing the action, and 2) taken positive steps both to encourage minority political participation and to remove structural barriers to minority electoral influence.

In order to demonstrate compliance with the Voting Rights Act during the ten-year period prior to commencement of a declaratory judgment action under Section 4(a), the City must satisfy five conditions: 1) the City has not used any test or device during that ten-year period for the purpose or with the effect of denying or abridging the right to vote on account of race or color; 2) no court of the United States has issued a final judgment during that ten-year period that the right to vote has been denied or abridged on account of race or color within the territory of the City, and no consent decree, settlement or agreement may have been entered into during that ten-year period that resulted in the abandonment of a voting practice challenged on such grounds; and no such claims may be pending at the time the declaratory judgment action is commenced; 3) no Federal examiners have been assigned to the City pursuant to the Voting Rights Act during the ten-year period preceding commencement of the declaratory judgment action; 4) the City and all governmental units within its territory must have complied with Section 5 of the Voting Rights Act, 42 U.S.C.§1973c, during that ten-year

period, including the requirement that voting changes covered under Section 5 not be enforced without Section 5 preclearance, and that all voting changes denied Section 5 preclearance by the Attorney General or the District Court for the District of Columbia have been repealed; and 5) neither the Attorney General nor the District Court for the District of Columbia have denied Section 5 preclearance to a submission by the City or any governmental unit within its territory during that ten-year period, nor may any Section 5 submissions or declaratory judgment actions be pending. 42 U.S.C. §1973b(a)(1)(A-E).

In addition, to obtain the declaratory judgment, the City and all governmental units within its territory must have eliminated voting procedures and methods of election that inhibit or dilute equal access to the electoral process. 42 U.S.C. §1973b(a)(1)(F)(i). In addition, the City must have engaged in constructive efforts to eliminate intimidation or harassment of persons exercising voting rights, and to expand the opportunity for convenient registration and voting for every person of voting age, and the appointment of minority persons as election officials throughout the jurisdiction and at all stages of the election and registration process. 42 U.S.C. §1973b(a)(1)(F)(ii-iii).

The City is required to present evidence of minority participation in the electoral process, including the levels of

minority group registration and voting, changes in such levels over time, and disparities between minority group and non-minority group participation. 42 U.S.C. §1973b(a)(2). In the ten years preceding bailout, the City must not have engaged in violations of any provision of the Constitution or laws of the United States or any State or political subdivision with respect to discrimination in voting on account of race or color. 42 U.S.C. §1973b(a)(3). Finally, the City must provide public notice of its intent to seek a Section 4(a) declaratory judgment. 42 U.S.C. §1973b(a)(4).

The Defendant United States has conferred with Plaintiff city of Harrisonburg and, after investigation, has agreed that the Plaintiff is entitled to the requested declaratory judgment. The parties have filed a joint motion, accompanied by a Stipulation of Facts, for entry of this Consent Judgment and Decree.

FINDINGS

Pursuant to the parties' stipulations and joint motion, this Court finds as follows:

1. The city of Harrisonburg is a political subdivision of the Commonwealth of Virginia, and a political subdivision of a state within the meaning of Section 4(a) of the Voting Rights Act, 42 U.S.C. §1973b(a)(1). See: Stipulation of Facts, ¶ 1.

2. There is an additional governmental unit within the City

of Harrisonburg, the Harrisonburg City School Board. See: Stipulation of Facts, ¶ 2.

3. The city of Harrisonburg is a covered jurisdiction subject to the special provisions of the Voting Rights Act, including Section 5 of the Act, 42 U.S.C. § 1973c. See: Stipulation of Facts, ¶ 3.

4. The city of Harrisonburg was designated as a jurisdiction subject to the special provisions of the Voting Rights Act on the basis of the determinations made by the Attorney General that Virginia maintained a "test or device" as defined by section 4(b) of the Act, 42 U.S.C. § 1973b(b), on November 1, 1964, and by the Director of the Census that fewer than 50 percent of the persons of voting age residing in the state voted in the 1964 presidential election. See: Stipulation of Facts, ¶ 4.

5. No discriminatory test or device has been used by the City during the ten years prior to the commencement of this action for the purpose or with the effect of denying or abridging the right to vote on account of race or color. See: Stipulation of Facts, ¶ 23.

6. No person in the City has been denied the right to vote on account of race or color during the past ten years. See: Stipulation of Facts, ¶ 22.

7. No court of the United States has issued a final

judgment during the last ten years prior to the commencement of this action that the right to vote has been denied or abridged on account of race or color in the City, and no consent decree, settlement, or agreement has been entered into resulting in any abandonment of a voting practice challenged on such grounds during that time. No such claims presently are pending or were pending at the time this action was filed. See: Stipulation of Facts, ¶ 24.

8. No Federal Examiners have been assigned to the city of Harrisonburg within the ten-year period preceding this action. See: Stipulation of Facts, ¶ 27.

9. The City and its school board have not enforced any voting changes prior to receiving Section 5 preclearance during the ten-year period preceding this action. See: Stipulation of Facts, ¶ 20.

10. All voting changes submitted by the city of Harrisonburg under Section 5 have been precleared by the Attorney General. No Section 5 submissions by the City presently are pending before the Attorney General. The City has never sought Section 5 judicial preclearance from this court. See: Stipulation of Facts, ¶ 21.

11. No voting practices or procedures have been abandoned by the City or challenged on the grounds that such practices or procedures would have either the purpose or the effect of denying

the right to vote on account of race or color during the ten-year period preceding this action. See: Stipulation of Facts, ¶ 25.

12. The City is not employing voting procedures or methods of election which inhibit or dilute equal access to the electoral process by its minority citizens. See: Stipulation of Facts, ¶ 26.

13. There is no indication that in the past ten years any persons in the City have been subject to intimidation or harassment in the course of exercising their right to participate in the political process. See: Stipulation of Facts, ¶ 28.

14. Because there is no evidence that any persons exercising rights protected under the Voting Rights Act have been subjected to any intimidation or harassment in the City in the last ten years, the City and the school board have not had to engage in any constructive efforts to eliminate intimidation or harassment of voters. See: Stipulation of Facts, ¶ 28.

15. The City has engaged in other constructive efforts, such as expanded opportunity for convenient registration and voting for every person of voting age, and the appointment of minority persons as poll workers for election day. See: Stipulation of Facts, ¶¶ 7, 13, 15-19.

16. Since the City does not record the race of its registered voters, it is unable to present evidence directly measuring minority voter participation, but the City has provided

evidence of voter participation to the extent possible. See: Stipulation of Facts, ¶¶ 6-9.

17. The City has not engaged, within the ten years prior to the commencement of this action, in violations of the Constitution or laws of the United States or any State or political subdivision with respect to discrimination in voting on account of race or color. See: Stipulation of Facts, ¶ 23.

18. The city of Harrisonburg has publicized the intended commencement and proposed settlement of this action in the media and in appropriate United States post offices as required under 42 U.S.C. §1973b(a)(4). No aggrieved party has sought to intervene in this action pursuant to 42 U.S.C. §1973b(a)(4). See: Stipulation of Facts, ¶ 29.

19. As a basis for resolving this action, the parties have agreed that the City will provide the Department of Justice, upon request, information in the City's possession about its efforts to expand political participation by its growing Hispanic community. The City will agree to keep records over the next three years of efforts taken by it to expand registration and voting opportunities for its Hispanic residents. Much as it currently does in the African-American community, the city's registrar's office shall make its best efforts to hold voter registration drives at churches and festivals and other gatherings where members of the Hispanic community are likely to

be in attendance. In addition, the City also agrees to record any complaints received by the City about voting at the Simms Building, stemming from the City's efforts to make the precinct handicapped-accessible. The City recognizes its continuing duty to maintain records showing the most recent registration figures, by precinct, and to make this information available to the Department of Justice upon request.

Accordingly, it is hereby ORDERED, ADJUDGED and DECREED:

A. The Plaintiff, city of Harrisonburg, Virginia is entitled to a declaratory judgment in accordance with Section 4(a)(1) of the Voting Rights Act, 42 U.S.C. §1973b(a)(1);

B. The parties' Joint Motion for Entry of Consent Judgment and Decree is GRANTED, and the city of Harrisonburg, including the Harrisonburg City School Board, shall be exempt from coverage pursuant to Section 4(b) of the Voting Rights Act, 42 U.S.C. §1973b(b), provided that this Court shall retain jurisdiction over this matter for a period of ten years. This action shall be closed and placed on this Court's inactive docket, subject to being reactivated upon application by either the Attorney General or any aggrieved person in accordance with the procedures set forth in 42 U.S.C. §1973b(a)(5).

C. The parties shall bear their own costs.

Entered this 17th day of April, 2002.

UNITED STATES CIRCUIT JUDGE

UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT JUDGE

Approved as to form and content:

For the Plaintiff city of Harrisonburg, Virginia

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

PULASKI COUNTY, VIRGINIA, A political subdivision of the Commonwealth of Virginia, County Administration Building 143 Third Street, NW, Suite 1 Pulaski, Virginia 24301 Plaintiff, v. ALBERTO R. GONZALES, United States Attorney General, and R. ALEXANDER ACOSTA, Assistant Attorney General, Civil Rights Division United States Department of Justice 950 Pennsylvania Avenue Washington, D.C. 20530 Defendants.	)	Civil Action No. _____

COMPLAINT

1. This is an action brought for declaratory relief pursuant to Section 4 of the Voting Rights Act of 1965, as amended, 42 U.S.C. Section 1973b (hereinafter "Section 4"). This Court has jurisdiction over this action pursuant to 28 U.S.C. Section 1343 (a)(4), 28 U.S.C. Section 2201, 42 U.S.C. Section 1973b, and 42 U.S.C. Section 19731(b).

2. Plaintiff Pulaski County ("the County") is a political subdivision of the Commonwealth of Virginia. Located in the southwest portion of Virginia, Pulaski County is approximately 350 miles southwest of Washington, D.C., 50 miles west of Roanoke, Virginia on Interstate 81, and about 220 miles west of Richmond.

3. Governmental units within Pulaski County include the Board of Supervisors of Pulaski County, Virginia, Pulaski County School Board, the Dublin Town Council and the Pulaski Town Council.

4. Pulaski County is governed by a five-member Board of Supervisors. All five of the supervisors are elected from single-member districts. The entire board is elected at the same time, once every four years, and a plurality win system is in effect. The supervisors serve four-year terms. *See* Va. Code Section 24.2-218. The Board's Chair and Vice-Chair are selected by the other supervisors.

5. By referendum vote on November 3, 1992, Pulaski County voters elected to change from an appointed to an elected School Board. The five members of the School Board are now elected, one from each supervisor's district, a plurality win system is in effect. Board members serve four-year terms, with the same method of election terms as used for supervisor elections.

See Va. Code Section 24.2-223. Pulaski County School Board elections are non-partisan.

6. The Town of Dublin has a mayor-council form of government. There are six members of the Dublin Town Council, who are elected at-large by plurality vote, and a mayor. The mayor only votes to break a tie. Elections are held at the May general election in even numbered years every two years, with three council members elected every two years. The term of office for mayor is four years and council members serve four year terms. *See* Va. Code Section 24.2-222. These elections are non-partisan.

7. The Town of Pulaski has a mayor-council form of government. There are six members of the Pulaski Town Council, who are elected at-large by plurality vote, and a mayor. The mayor only votes to break a tie. Elections are held at the May general election in even numbered years every two years, with three council members elected every two years. The term of office for mayor is two years and council members serve four year terms. *See* Va. Code Section 24.2-222. These elections are non-partisan.

8. There are twelve voting precincts in Pulaski County for purposes of electing the County Board of Supervisors members and School Board members. The polling places are located in the Belspring United Methodist Church, the Fairlawn Fire Department, the New River Fairgrounds building, the Draper Fire

Department, the Central Gym, the Dublin Lions Club, the Hiwassee Fire Department, and the Snowville Elementary School. Some of these polling places house multiple precincts.

There is one voting precinct in the Town of Pulaski for the purpose of electing the town mayor and town council members.

There is one voting precinct in the Town of Dublin for the purpose of electing the town mayor and town council members.

9. According to the 2000 Census, Pulaski County has a total population of 35,127 persons, of whom 32,529 (92.6%) are white; 1,957 (5.6%) are black, and 336 (1.0%) are Hispanic. The total voting age population is 27,888 persons, of whom 25,931 (93%) are white; 1,531 (5.5%) are black, and 241 (0.9%) are Hispanic. According to the 2000 census, the Town of Dublin has a population of 2,288 of whom 196 (8.6%) are black and 15 (0.7%) are Hispanic. The total voting age population of the town is 1,870 people, of whom 166 (8.9%) are black and 14 (0.7%) are Hispanic. According to the 2000 census, the Town of Pulaski has a population of 9,473 of whom 734 (7.7%) are black and 191 (2.0%) are Hispanic. The total voting age population of the town is 7,415 people, of whom 542 (7.3%) are black and 126 (1.3%) are Hispanic.

10. Like other jurisdictions in the Commonwealth of Virginia, Pulaski County does not collect or maintain voter registration data by race. The numbers

countywide, irrespective of race, however, are encouraging. Since 1990, registration in the County has grown more than 40% from 14,729 in 1990 to 20,672 in 2004. Today, more than 74% percent (20,672 of 27,888) of the County's voting age population are registered voters.

11. Voters may register in person at the Registrar's Office on the third floor of the Stone Pulaski County Courthouse, 52 West Main Street, Suite 300, Pulaski, Virginia, between 8:30 a.m. and 4:30 p.m., Monday through Friday. Voters also may register at the Department of Motor Vehicles. Voter registration applications are available at the Pulaski County Main Library and it's Dublin Branch, at County post offices, at the Pulaski County Service Center in Fairlawn, at Pulaski County High School, at Pulaski County Department of Social Services and at the Regional Mental Health Agency. The registrar's office will mail registration applications upon request. Twice a year, the registrar's office registers seniors at the only high school. Civic organizations and churches also conduct registration drives. The registrar's office gives these organizations registration forms and advises the participants on how registrants are to fill out the forms.

12. As a political subdivision of the Commonwealth of Virginia, plaintiff Pulaski County has been subject to certain special remedial provisions of the Voting Rights Act, including the provisions of Section 5 of the Act, 42 U.S.C.

Section 1973c. Under Section 5 of the Act, known as the "preclearance" provisions, covered jurisdictions, including Pulaski County, are required to seek and obtain preclearance from either this Court or from the United States Attorney General of any change affecting voting, and such preclearance must be obtained prior to implementation.

13. Since its inception in 1965, the Voting Rights Act has allowed the States and political subdivisions, which are subject to these special provisions of the Act, to exempt themselves from coverage under the Act's special remedial provisions, if they can satisfy standards established in the Voting Rights Act.

14. In 1982, Congress made changes in the exemption standards of the Act. As amended in 1982, Section 4 of the Voting Rights Act provides that States and political subdivisions covered under the special provisions of the Act are entitled to a declaratory judgment in this Court granting an exemption from the Act's special remedial provisions if, during the ten years preceding the filing of the action:

A) no test or device has been used either for the purpose or with the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group, within the State or political subdivision seeking a declaratory judgment;

B) no final judgment has been entered by any court determining that the political subdivision has denied or abridged the right to vote on account of race, color or membership in a language minority group;

C) no Federal examiners have been assigned to the political subdivision;

D) all governmental units within the political subdivision have complied with the preclearance provisions of Section 5 of the Voting Rights Act, 42 U.S.C. 1973c; and

E) the Attorney General has not interposed any objection to any proposed voting change within the political subdivision and no declaratory judgment has been denied with regard to such a change by this Court under Section 5.

15. As amended in 1982, Section 4 of the Act also requires States and political subdivisions seeking an exemption from the Act's special provisions to show that, during the pendency of the declaratory judgment action seeking such exemption:

A) Any voting procedure or method of election within the state or political subdivision exists which inhibits or dilutes equal access to the electoral process has been eliminated;

B) Constructive efforts have been made by the political subdivision to eliminate any intimidation or harassment of persons exercising rights under the Voting Rights Act; and

C) Expanded opportunities for convenient registration and voting exist within the State or political subdivision.

16. As described in each of the paragraphs set forth below, Pulaski County has fully complied with the provisions of Section 4 of the Act as set forth in paragraphs 14 and 15, *supra*.

17. Over the years, Pulaski County has made numerous submissions to the Department of Justice seeking preclearance of voting changes under Section 5 of the Voting Rights Act. In the preceding ten years, Pulaski County has made

fourteen (14) Section 5 submissions of changes affecting voting for preclearance review under Section 5 of the Voting Rights Act. 42 U.S.C. Section 1973c. The office of the defendant Attorney General has approved each and every voting change that has been submitted by the County for preclearance under the Voting Rights Act. Since passage of the Voting Rights Act in 1965, not a single objection has been interposed by the Department of Justice to any voting change in Pulaski County. Many of the voting changes made over the years in Pulaski County and submitted for Section 5 preclearance actually expanded the opportunities for County residents to become registered voters and to cast ballots.

18. Pulaski County has a three-member Electoral Board appointed by the County Circuit Court judge. The Electoral Board is responsible for conducting elections and appointing the Voter Registrar. Historically, the chairs of the local Democratic and Republican parties forward names to the Electoral Board to be appointed as poll officials by the Electoral Board. The appointment of poll officials is for a one-year term. Currently, none of the members on the Electoral Board is a member of a racial minority group. No person recommended by a political party chair to serve as a poll official ever has been rejected by the Electoral board.

19. In recent years, the local political parties have not made recommendations to the Electoral Board for poll officials. There is no indication

in the preceding ten years that any eligible Pulaski County resident who has expressed an interest in becoming an election official has been denied the opportunity to serve. The registrar forwards the names of voters indicating an interest in serving as a poll official to the Electoral Board for consideration and appointment.

20. Although the number of minority citizens in Pulaski County is quite small, minority citizens have nonetheless played important roles in the political process. For example, Pulaski County currently employs 100 poll workers, of whom 12 are black or multi-racial. In addition, Joseph L. Sheffey, who is black, is the Chairman of the Board of Supervisors of Pulaski County. Lane Penn, who is black, is a member of the Pulaski Town Council. Edith Hampton, who is black, is a member of the Dublin Town Council and is the appointed Pulaski County Building Inspector.

21. No person in Pulaski County has been denied the right to vote on account of race, color, or membership in language group since at least the time the Voting Rights Act was enacted in 1965.

22. No "test or device" as defined in the Voting Rights Act (42 U.S.C. Section 1973b(c) has been used in Pulaski County as a prerequisite to either registering or voting for at least the preceding ten years.

23. Pulaski County has never been the subject of any lawsuit in which it was alleged that a person (or persons) was being denied the right to vote on account of race, color or membership in a language minority group.

24. No voting practices or procedures have been abandoned by the County or challenged on the grounds that such practices or procedures would have either the purpose or the effect of denying the right to vote on account of race, color, or membership in a language minority group.

25. Pulaski County has not employed any voting procedures or methods of election that inhibit or dilute equal access to the electoral process by minority voters in the County. Under the County's current election method, minority voters are not being denied an equal opportunity to elect candidates of their choice to the County Board of Supervisors, to the County School Board, or any of the Town governmental bodies.

26. Federal examiners have never been appointed or assigned to Pulaski County under Section 3 of the Voting Rights Act. 42 U.S.C. Section 1973a.

27. There are no known incidents in Pulaski County where any person exercising his or her right to vote has been intimidated or harassed at the polls (or while attempting to register to vote).

28. The allegations set forth in paragraphs 2-11 and 16-27, above, if established, entitle Pulaski County to a declaratory judgment under Section 4 of

the Voting Rights Act, 42 U.S.C. Section 1973b, exempting the County and the governmental units within the County from the special remedial provisions of the Voting Rights Act.

29. Pursuant to 42 U.S.C. Section 1973b(a)(4), Pulaski County has "publicize[d] the intended commencement and ... proposed settlement of [this] action in the media serving [the County] and in the appropriate United States post offices." Pulaski County has publicized the intended filing of this action prior to its commencement in the local newspaper of general circulation and in appropriate United States post offices throughout the County in accordance with 42 U.S.C. Section 1973b(a)(4). Pulaski County issued a notice regarding the proposed bailout on March 28, 2005. The County published notice at the Registrar's office and in The Southwest Times, a local daily newspaper having a general circulation in Pulaski County, in the April 5, and April 12, 2005 editions. In addition, the County posted copies of the notice in other public locations, including the County Courthouse, the Pulaski County Main Library and its Dublin Branch, the Pulaski County Administration Building and the Voter Registrar's Office.

WHEREFORE, plaintiff Pulaski County respectfully prays that this Court:

A. Convene a three-judge court, pursuant to 28 U.S.C. Section 2284 and 42 U.S.C. Section 1973b, to hear the claims raised in plaintiff's complaint;

B. Enter a declaratory judgment that Pulaski County is entitled to a bailout from the special remedial provisions of the Voting Rights Act; and

C. Grant such other relief as may be necessary and proper as the needs of justice may require.

ORIGINALLY SIGNED (IN PEN) COMPLAINT

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

PULASKI COUNTY, VIRGINIA, A political subdivision of the Commonwealth of Virginia, County Administration Building 143 Third Street, NW, Suite 1 Pulaski, Virginia 24301 Plaintiff, v. ALBERTO R. GONZALES, United States Attorney General, and R. ALEXANDER ACOSTA, Assistant Attorney General, Civil Rights Division United States Department of Justice 950 Pennsylvania Avenue Washington, D.C. 20530 Defendants.	)	ECF Civil Action No. 1:05-cv-1265 Judge: _____ Three-Judge Court

CONSENT JUDGMENT AND DECREE

This action was initiated by Pulaski County, a political subdivision of the Commonwealth of Virginia (hereafter "the County"). The County is subject to the provisions of Section 5 of the Voting Rights Act of 1965, as amended, 42

U.S.C. Section 1973c. The County seeks a declaratory judgment under Section 4 of the Voting Rights Act of 1965, as amended, 42 U.S.C. Section 1973b. A three-judge court has been convened as provided in 42 U.S.C. 1973b(a) (5) and 28 U.S.C. Section 2284.

Section 4(a) of the Voting Rights Act provides that a state or political subdivision subject to the special provisions of the Act may be exempted from those provisions if it can demonstrate in an action for a declaratory judgment before the United States District Court for the District of Columbia that it has both 1) complied with the Voting Rights Act during the ten-year period prior to filing the action, and 2) taken positive steps both to encourage minority political participation and to remove structural barriers to minority electoral influence.

In order to demonstrate compliance with the Voting Rights Act during the ten-year period prior to commencement of a declaratory judgment action under Section 4(a), the County must satisfy five conditions: 1) the County has not used any test or device during that ten-year period for the purpose or with the effect of denying or abridging the right to vote on account of race, or color; 2) no court of the United States has issued a final judgment during that ten-year period that the right to vote has been denied or abridged on account of race or color within the territory of the County, and no consent decree, settlement or agreement may have

been entered into during that ten-year period that resulted in the abandonment of a voting practice challenged on such grounds; and no such claims may be pending at the time the declaratory judgment action is commenced; 3) no Federal examiners have been assigned to the County pursuant to the Voting Rights Act during the ten-year period preceding commencement of the declaratory judgment action; 4) the County and all governmental units within its territory must have complied with Section 5 of the Voting Rights Act, 42 U.S.C. Section 1973c. during that ten-year period, including the requirement that voting changes covered under Section 5 not be enforced without Section 5 preclearance, and that all voting changes denied Section 5 preclearance by the Attorney General or the District Court for the District of Columbia have been repealed; and
5) neither the Attorney General nor the District Court for the District of Columbia have denied Section 5 preclearance to a submission by the County or any governmental unit within this territory during that ten-year period, nor may any section 5 submissions or declaratory judgment actions be pending.
42 U.S.C. Section 1973b(a) (1) (A-E).

In addition, to obtain the declaratory judgment, the County and all governmental units within its territory must have eliminated voting procedures and methods of election that inhibit or dilute equal access to the electoral process.

42 U.S.C. Section 1973b (a) (1) (F) (i). In addition, the County must have engaged in constructive efforts to eliminate intimidation or harassment of persons exercising voting rights, and other efforts such as expanded opportunity for convenient registration and voting for every person of voting age, and the appointment of minority persons as election officials throughout the jurisdiction and at all stages of the election and registration process. 42 U.S.C. Section 1973b (a) (1) (F) (ii-iii).

The County is required to present evidence of minority participation in the electoral process, including the levels of minority group registration and voting, changes in such levels over time, and disparities between minority group and non-minority group participation. 42 U.S.C. Section 1973 b(A) (2). In the ten years preceding bailout, the County must not have engaged in violations of any provision of the Constitution or laws of the United States or any State or political subdivision with respect to discrimination in voting on account of race or color. 42 U.S.C. Section 1973b (a) (3). Finally, the County must provide public notice of its intent to seek a Section 4(a) declaratory judgment. 42 U.S.C. Section 1973b (a) (4).

The Defendant United States, after investigation, has agreed that the Plaintiff is entitled to the requested declaratory judgment. 42 U.S.C. Section

1973b (a) (9). The parties have filed a joint motion for entry of this Consent Judgment and Decree.

FINDINGS

Pursuant to the parties' stipulations and joint motion, this Court finds as follows:

1. Pulaski County is a political subdivision of the Commonwealth of Virginia, and a political subdivision of a state within the meaning of Section 4 (a) of the Voting Rights Act, 42 U.S.C. Section 1973b (a) (1).

2. Additional governmental units within Pulaski County include the Pulaski County School Board and the town governments of Pulaski and Dublin.

3. Pulaski County is a covered jurisdiction subject to the special provisions of the Voting Rights Act, including Section 5 of the Act. 42 U.S.C. Section 1973c.

4. Pulaski County was designated as a jurisdiction subject to the special provisions of the Voting Rights Act on the basis of the determinations made by the Attorney General that Virginia maintained a "test or device" as defined by Section 4(b) of the Act, 42 U.S.C. Section 1973b(b), on November 1, 1964, and by the Director of the Census that fewer than 50 percent of the persons of voting age residing in the state voted in the 1964 presidential election.

5. No discriminatory test or device has been used by Pulaski County during the ten years prior to the commencement of this action for the purpose or with the effect of denying or abridging the right to vote on account of race or color.

6. No person in Pulaski County has been denied the right to vote on account of race or color during the past ten years.

7. No court of the United States has issued a final judgment during the last ten years prior to the commencement of this action that the right to vote has been denied or abridged on account of race or color in Pulaski County, and no consent decree, settlement, or agreement has been entered into resulting in any abandonment of a voting practice challenged on such grounds during that time. No such claims presently are pending or were pending at the time this action was filed.

8. No Federal Examiners have been assigned to Pulaski County within the ten-year period preceding this action.

9. The Attorney General's investigation revealed that Pulaski County and its governmental units have enforced fourteen minor voting changes prior to receiving Section 5 preclearance during the ten-year period preceding this action. Those voting changes have been submitted and precleared.

10. All voting changes submitted by Pulaski County and its governmental units under Section 5 have been precleared by the Attorney General. No Section 5 submissions by the County or its governmental units presently are pending before the Attorney General. The County and its governmental units have never sought Section 5 judicial preclearance from this Court.

11. No voting practices or procedures have been abandoned by Pulaski County or challenged on the grounds that such practices or procedures would have either the purpose or the effect of denying the right to vote on account of race or color during the ten-year period preceding this action.

12. Pulaski County does not employ voting procedures or methods of election which inhibit or dilute equal access to the electoral process by the County's minority citizens.

13. There is no indication that in the past ten years any persons in Pulaski County have been subject to intimidation or harassment in the course of exercising their right to participate in the political process.

14. Because there is no evidence that any voters in Pulaski County have been subjected to intimidation or harassment within the last ten years, neither Pulaski County nor any of its governmental units have been required to take any

constructive efforts to eliminate such intimidation and harassment of persons exercising rights protected under the Voting Rights Act.

15. Pulaski County has engaged in constructive efforts to enhance registration and voting opportunities for all of its citizens of voting age by increasing the number of locations at which persons can register to vote and polling locations at which they can vote. The Pulaski County Registrar, with the cooperation of the County's Electoral Board has 100 poll officials, twelve of whom are black or multi-racial. This group of twelve poll officials exceed the percentage of multi-racial minority groups in the County's general population. County election officials have cooperated with minority community members to recruit more minority poll officials, and these efforts have been largely successful in attracting minorities to work as poll officials.

16. Because Pulaski County does not record the race of its registered voters, it is unable to present evidence directly measuring minority voter participation, but the County has provided sufficient evidence of voter participation to the extent possible.

17. Pulaski County has not engaged, within the ten years prior to the commencement of this action, in violations of the Constitution or laws of the

United States or any State or political subdivision with respect to discrimination in voting on account of race or color.

18. Pulaski County has publicized the intended commencement and proposed settlement of this action in the media and in appropriate United States post offices as required under 42 U.S.C. Section 1973b (a) (4). No aggrieved party has sought to intervene in this action pursuant to 42 U.S.C. Section 1973b (a) (4).

19. No matters are in controversy in the civil action.

Accordingly, it is hereby ORDERED, ADJUDGED and DECREED:

A. No matters being in controversy, and there being no objection to the form and entry of this Order, the Plaintiff, Pulaski County, Virginia, is entitled to a declaratory judgment in accordance with Section 4 (a) (1) of the Voting Rights Act, 42 U.S.C. Section 1973b (a) (1);

B. The parties' Joint Motion for Entry of Consent Judgment and Decree is GRANTED, and Pulaski County, including the Pulaski County School Board and the towns of Pulaski and Dublin shall be exempt from coverage pursuant to Section 4 (b) of the Voting Rights Act, 42 U.S.C. Section 1973b(b). This action shall be closed and placed on this Court's inactive docket, subject to being reactivated upon application by either the Attorney General or any aggrieved

person in accordance with the procedures set forth in 42 U.S.C. Section 1973b (a) (5).

C. The parties shall bear their own costs.

Entered this 26th day of September, 2005.

UNITED STATES DISTRICT JUDGE

Approved as to form and content:

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KENNETH R. WAINSTEIN
United States Attorney

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF COLUMBIA

ROANOKE COUNTY, VIRGINIA,
a political subdivision of the
Commonwealth of Virginia,
5204 Bernard Drive
Roanoke, Virginia 24018

Plaintiff,

v.

JANET RENO, Attorney General of
the United States of America,
BILL LANN LEE,
Acting Assistant Attorney General,
Civil Rights Division,

Defendants.

FILED

AUG 11 2000

[redacted]

CASE NUMBER 1:00CV01949

JUDGE: Ricardo M. Urbina

DECK TYPE: Three Judge Court

DATE STAMP: 08/11/2000

Three-Judge Court Requested

COMPLAINT

Roanoke County alleges that:

1. This is an action brought for declaratory relief pursuant to Section 4 of the Voting Rights Act of 1965, as amended, 42 U.S.C. §1973b (hereinafter "Section 4"). This Court has jurisdiction over this action pursuant to 28 U.S.C. §1343(a)(4), 28 U.S.C. §2201, 42 U.S.C. §1973b, and 42 U.S.C. §1973l(b).

2. Plaintiff County of Roanoke ("the County") was founded in 1838 and is a political subdivision of the Commonwealth of Virginia. Roanoke County, Virginia, covers 251 square land miles and is located in the scenic Blue Ridge Mountains of southwest Virginia.

3. There is only one incorporated political subdivision in the County, the Town of Vinton, which is located on the east side of the County. Residents of Vinton are eligible to vote in county elections.

4. The City of Salem and the City of Roanoke are independent cities located within Roanoke County. City residents of Salem and Roanoke are not eligible to vote in county elections, and county residents are not eligible to vote in City of Salem or City of Roanoke elections.

5. The County's governing body is a five-member elected board of supervisors. Each of the supervisors is elected from a single-member district (a magisterial district). Staggered terms are used and a plurality win system is in effect. The chair and vice chair are each selected by the members. Each magisterial district contains around 16,000 residents. Roanoke County operates under a County Administrator form of government.

6. The five supervisorial districts contain a total 31 polling locations, located conveniently throughout the County. All polling places are located in buildings open to the public and completely accessible to physically disabled persons.

7. The Roanoke County School Board has been elected since 1994, and is elected from the same districts as those used for the County Board of Supervisors.

8. According to the 1990 census, Roanoke County, Virginia has a total population of 79,332. Of this number, 2021 persons (2.5%) are black and 440 (0.6%) are Hispanic. The voting age population, according to the 1990 census, is 61,505. Of this number, 1541 (2.5%) are black and 292 (0.5%) are Hispanic. The Town of Vinton, according to the 1990 census, has a total population of 7665 persons. Of this total, 245 (3.2%) are black and 60 (0.8%) are Hispanic. The voting age population of Vinton, according to the 1990 census, is 5,929. Of this number, 166 (1.8%) are black and 29 (0.6%) are Hispanic.

9. Like other jurisdictions in the Commonwealth of Virginia, the County of Roanoke does not collect or maintain voter registration data by race. Current data show, however, that a significant proportion of the County's voting age population is registered to vote. As August 1, 2000, there were 57,101 registered voters in Roanoke County. This number constitutes 92.8% of the County's 1990 voting age population.

10. The number of registered voters in the County has steadily risen over the last couple of decades. In 1973, there were 33,581 registered voters in the County. By 1983, the number of registered voters had grown to 36,511. By 1990, the number had risen to 42,894. In the 1990's, the number of registered voters in the County has grown by 33% (from 42,894 in 1990 to 57,101 today).

11. As a political subdivision of the Commonwealth of Virginia, the plaintiff County of Roanoke has been subject to certain special remedial provisions of the Voting Rights Act, including the provisions of Section 5 of the Act, 42 U.S.C. §1973c. Under Section 5 of the Act, known as the "preclearance" provisions, covered jurisdictions, including the County of Roanoke, are required to seek and obtain preclearance from either this Court or from the United States Attorney General of any change affecting voting, and such preclearance must be obtained prior to implementation.

12. Since its inception in 1965, the Voting Rights Act has allowed the States and political subdivisions, which are subject to these special provisions of the Act, to exempt themselves from coverage under the Act's special remedial provisions, if they can satisfy standards established in the Voting Rights Act.

13. In 1982, Congress made changes in the exemption standards of the Act. As amended in 1982, Section 4 of the Voting Rights Act provides that States and political subdivisions covered under the special provisions of the Act are entitled to a declaratory judgment in this Court granting an exemption from the Act's special remedial provisions if, during the ten years preceding the filing of the action:

> A) no test or device has been used either for the purpose or with the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group, within the State or political subdivision seeking a declaratory judgment;
> B) no final judgment has been entered by any court determining that the political subdivision has denied or abridged the right to vote on account of race, color, or membership in a language minority group;
> C) no Federal examiners have been assigned to the political subdivision;
> D) all governmental units within the political subdivision have complied with the preclearance provisions of Section 5 of the Voting Rights Act, 42 U.S.C. 1973c; and
> E) the Attorney General has not interposed any objection to any proposed voting change within the political subdivision and no declaratory judgment has been denied with regard to such a change by this Court under Section 5.

14. As amended in 1982, Section 4 of the Act also requires States and political subdivisions seeking an exemption from the Act's special provisions to show that, during the pendency of the declaratory judgment action seeking such exemption:

> A) Any voting procedure or method of election within the state or political subdivision exists which inhibits or dilutes equal access to the electoral process has been eliminated;
> B) Constructive efforts have been made by the political subdivision to eliminate any intimidation or harassment of persons exercising rights under the Voting Rights Act; and
> C) Expanded opportunities for convenient registration and voting exists within the State or political subdivision.

15. For a period that extends at least more than the last ten years, the County of Roanoke has made a timely submission of numerous changes affecting voting for preclearance review under Section 5 of the Voting Rights Act. 42 U.S.C. §1973c. Since 1983, for example, over 257 voting changes have been submitted for Section 5 preclearance. The defendants have never interposed an objection under the Voting Rights Act to any of the County's submitted voting changes. Since the County has only sought administrative preclearance, the District Court for the District of Columbia has not denied a Section 5 declaratory judgment in any case where the County of Roanoke sought preclearance. The voting changes adopted by the County over the years usually have expanded the opportunity for convenient registration and voting.

16. Voter registration opportunities in the County are readily and equally available to all citizens. The voter registration office for County residents is located in the County Administration Building in Roanoke, the largest population center and a geographically central location within the County. The voter registration office is open from 8 am to 5 p.m., Monday through Friday.

17. Voters may also register by mail, and voter registration applications are available to all County voters at locations convenient to the public, including all County post office branches, libraries, the school board administration offices, the clerk of court's office, and the lobby of the County Administration Building.

18. Voter registration is also available under the National Voter Registration Act ("NVRA") at Division of Motor Vehicle ("DMV") offices and public assistance agencies. While in past years most voters became registered at the offices of the County Board of Registrars, the

implementation of the NVRA has changed the origin of the great majority of registration applications. Today, most of the County's new registrants register through the DMV and by mail.

19. Roanoke County's also has a three-member Electoral Board pursuant to Virginia state law. The County's three-member Electoral Board appoints persons each February to work as poll officials. The appointment of poll officials is for a one-year term. Recommendations of persons to be appointed come from the chairs of the local Democratic and Republican parties. Not a single person recommended by a political party chair has ever been rejected by the Electoral Board.

20. In recent years, voter registration applications in Roanoke County (including the one used at DMV and public assistance agencies) have included a special section soliciting persons to serve as poll officials. Each and every time a voter has indicated an interest in serving as a poll official, the Registrar has sent that person's name and address to the respective chair of the County's political parties. Not a single minority group person has ever been rejected for a poll worker position in Roanoke County.

21. The County also advertises the need for poll workers on its web site. In addition, the County broadcasts advertisements expressing the need for poll workers on Channel 3, the public access cable television channel in Roanoke County.

22. Because there are so few persons in the County who belong to a racial or ethnic minority group (black citizens comprise just 2.5% of the County's voting age population), there is a paucity of minority persons available to work at the polls. Despite the fact that they comprise such a relatively small percentage of the eligible persons who can serve as poll officials, black

citizens have served, and continue to serve, as poll officials in Roanoke County. Today, there are four black citizens who serve as poll workers in four different precincts in the County (Northside, Ogden, Bonsack, and Castle Rock). In past years, three other black citizens served as poll officials. One worked the Mount Pleasant Precinct and the other two worked in the Glenvar precinct. Thus, black citizens not only have worked as poll officials in the County, but they also have served at locations widely scattered throughout the County.

23. No person in the County of Roanoke has been denied the right to vote on account of race, color, or membership in language group since at least the time the Voting Rights Act was enacted in 1965. No "test or device" as defined in the Voting Rights Act (42 U.S.C. §1973b(c)) has been used in the County of Roanoke for at least the preceding ten years.

24. The County of Roanoke has never been the subject of any lawsuit in which it was alleged that a person (or persons) was being denied the right to vote on account of race, color, or membership in a language minority group.

25. No voting practices or procedures, have been abandoned by the County or challenged on the grounds that such practices or procedures would have either the purpose or the effect of denying the right to vote on account of race, color, or membership in a language minority group.

26. The County of Roanoke has never employed any voting procedures or methods of election that inhibit or dilute equal access to the electoral process in the County.

27. No Federal examiners have ever been appointed or assigned to the County of Roanoke under Section 3 of the Voting Rights Act, 42 U.S.C. §1973a.

28. There are no known incidents in the County of Roanoke where persons exercising their right to vote at the polls have been intimidated or harassed.

29. The allegations set forth in paragraphs 15 through 28, above, if established, entitle the County of Roanoke to a declaratory judgment under Section 4 of the Voting Rights Act, exempting the County from the special remedial provisions of the Voting Rights Act.

30. Pursuant to 42 U.S. C. §1973b, the County of Roanoke has "publicize[d] the intended commencement and any proposed settlement of [this] action in the media serving [the County] and in the appropriate United States post offices." The County published a legal Notice that it intended to commence this bailout action in the Roanoke Times & World News newspaper on December 17, 1999, and December 19, 1999. Further, the County published additional Notice in the Roanoke Times and World News newspaper on August 6, 2000, stating that it had reached a proposed settlement of this action with the Department of Justice. This is the largest newspaper of general circulation in Roanoke County. In addition to the aforementioned publications, Notices that Roanoke County would be seeking this bailout judgment and that it proposed to settle this action have been posted at public locations throughout the County, including all of the County libraries, County post offices, the circuit Court Clerk's Office, and on the County's web page. Not a single person has expressed any opposition to the County Attorney or the County's General Registrar regarding the County's efforts to seek and obtain a bailout under the Voting Rights Act.

WHEREFORE, plaintiff Roanoke County respectfully prays that this Court:

A. Convene a three-judge court, pursuant to 28 U.S.C.§2284 and 42 U.S.C. §1973b, to hear the claims raised in plaintiff's complaint;

B. Enter a declaratory judgment that the County of Roanoke is entitled to a bailout from the special remedial provisions of the Voting Rights Act; and

C. Grant such other relief as may be necessary and proper as the needs of justice may require.

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ROANOKE COUNTY, VIRGINIA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	C.A. No. 1:00CV01949
	)	
JANET RENO, Attorney General of the United States of America	)	(RMU, ___, ___)
	)	(three-judge court)
BILL LANN LEE, Assistant Attorney General, Civil Rights Division,	)	
	)	
	)	
Defendants.	)	
	)	

STIPULATION OF FACTS

This action was initiated by Roanoke County, a political subdivision of the Commonwealth of Virginia (hereafter "the County"). The County seeks a declaratory judgment pursuant to Section 4(a) of the Voting Rights Act of 1965, as amended, 42 U.S.C. § 1973b.

The parties have jointly moved this three-judge Court for entry of a Consent Judgment and Decree to resolve this action. In support of that motion, the parties have entered into the following stipulation of facts. The facts in this stipulation may be received into evidence in lieu of further proof or testimony.

It is hereby stipulated, by and between the respective parties, that:

1. Plaintiff Roanoke County ("the County") is a political subdivision of the Commonwealth of Virginia. See Va. Const. art. VII, § 1. Roanoke County is a political subdivision of a state

within the meaning of Section 4(a) of the Voting Rights Act, 42 U.S.C. §1973b(a)(1). Roanoke County, Virginia, is located in the Roanoke Valley, approximately 250 miles southwest of Washington, D.C.

2. Roanoke County, Virginia, is one of only two counties in the Commonwealth of Virgina that have been granted a charter by the General Assembly pursuant to Title 15.2, Code of Virginia, Chapter 2.

3. In addition to the County itself, there are two governmental units in Roanoke County within the meaning of 42 U.S.C. §1973b(a)(1): the Town of Vinton and the Roanoke County School Board.

4. Roanoke City, Virginia and Salem City, Virginia are not parties to this bailout action because they are "independent cities" as that term is used in Title 15.2, Code of Virginia, Chapter 39, and are not contained within the boundaries of the political subdivision of Roanoke County, Virginia. Residents of Roanoke City and Salem City are not eligible to vote in Roanoke County elections and Roanoke County residents are not eligible to vote in Roanoke City and Salem City elections.

5. Roanoke County is a covered jurisdiction subject to the special provisions of the Voting Rights Act, including Section 5 of the Act, 42 U.S.C. § 1973c. Under Section 5, the County is required to obtain preclearance from either this Court or from the Attorney General for any change in voting standards, practices and procedures since the coverage date of the Act in Virginia (i.e., November 1,

1964).

6. According to the 1990 Census, the County has a total population of 79,332. Of this number, 2,021 (2.5%) are black and 440 (or 0.5%) are Hispanic. The total number of persons age eighteen and over (the voting age population), according to the 1990 Census, is 61,505. Of this number, 1,541 (2.5%) are black and 292 (0.5%) are Hispanic. The County's 1990 Census data includes the populations of the town of Vinton, and the unincorporated towns of Cave Springs and Hollins.

7. According to the 1990 Census, the voting age population of the town of Vinton was 5,929, of which 167 (2.8%) were black, and 30 (0.5%) were Hispanic.

8. According to the 1990 Census, the voting age population of the unincorporated town of Cave Springs was 18,754, of which 396 (2.1%) were black and 108 (.6%) were Hispanic.

9. According to the 1990 Census, the voting age population of the unincorporated town of Hollins was 10,874, of which 431 (3.1%) were black and 59 (.5%) were Hispanic.

10. Like other jurisdictions in the Commonwealth of Virginia, the County does not collect or maintain voter registration data by race. Current data show, however, that a significant proportion of the County's voting age population is registered to vote. As of November 2, 1999, there were 55,113

registered voters in Roanoke County. This number constitutes 89.6% of the County's 1990 voting age population. The number of registered voters in the County has increased approximately thirty percent over the number of registered voters in 1989, which totaled 42,343.

11. The minority population within Roanoke County is dispersed throughout the County, with the largest percentages of blacks concentrated in the Northside precinct (precinct 104) in Catawba, the Hollins precinct (precinct 206), and in the North Vinton and South Vinton precincts (precincts 403 and 404, respectively). This dispersion is reflected in the racial composition of the County's five magisterial districts which contained the following populations as of 1990: District 1 (Catawba) had a total population of 15,705 of which 3.4% were black, District 2 (Cave Spring) had a total population of 15,776 of which 2.3% were black, District 3 (Hollins) had a total population of 16,567 of which 2.0% were black, District 4 (Vinton) had a total population of 15,470 of which 2.8% were black, and District 5 (Windsor Hills) had a total population of 15,814 of which 1.6% were black.

12. The County has five independently elected constitutional officers, including the Sheriff, Commonwealth's Attorney, Commissioner of Revenue, Treasurer, and Clerk of the Circuit Court. All of these officers are elected to four year terms, except for the Clerk of the Circuit Court, who is elected to an eight year term.

See Va. Stat. § 24.2-217. No black has served in any of these offices nor has any black candidate sought election to such offices.

13. The County's governing body is a five-member Board of Supervisors elected from the five single-member magisterial districts. The County Supervisors are elected biannually and serve four-year terms. Staggered terms are used and a plurality win system is in effect. See Va. Stat. §§ 24.2-218 and 24.2-219.

14. The magisterial districts contain a total of 31 polling locations, located conveniently to voters across the County. All polling places are located in buildings open to the public (e.g., public schools, fire halls, etc.). There is no evidence that the polling places are inaccessible to disabled voters.

15. The County School Board has been elected since 1994, and is elected from the same five magisterial districts as those used for the County Board of Supervisors, and the same method of election is in effect. See Va. Stat. § 24.2-222.

16. Roanoke County contains one incorporated town, Vinton. Vinton has a mayor-council form of government and elects their four council members and mayor at-large by plurality vote to four year terms. The terms are staggered so that every two years two councilmen are elected, with the mayor elected every four years. See Va. Stat. § 24.2-222.

17. No minority candidates have ever sought a position on the County Board of Supervisors or on the town council of Vinton. In 1995, a black candidate unsuccessfully ran for a seat in the Virginia House of Delegates (District 17) that includes five precincts in Roanoke County, receiving approximately 31% of the vote in the Roanoke County precincts.

18. Roanoke County contains one special district, the Roanoke Valley Resource Authority (a sanitation district). The Roanoke Valley Resource Authority was formed in 1992. All seven members of its board of directors are appointed by each of the three participating governmental units (four by Roanoke County, two by Roanoke City, and one by the town of Vinton). As an appointed body, the Roanoke Valley Resource Authority is not subject to the special provisions of the Voting Rights Act, including Section 5 of the Act, 42 U.S.C. § 1973c.

19. Roanoke County was designated as a jurisdiction subject to the special provisions of the Voting Rights Act on the basis of the determinations made by the Attorney General that Virginia maintained a "test or device" as defined by section 4(b) of the Act on November 1, 1964, and by the Director of the Census that fewer than 50 percent of the persons of voting age residing in the state voted in the 1964 presidential election. 42 U.S.C. § 1973b(b). The "test or device" triggering preclearance coverage under Section 5 was an article of

the Virginia Constitution providing for a literacy test as a prerequisite for becoming an elector. Va. Const. Art. II, Sec. 20 (1902). The literacy test was repealed by the Virginia Constitution of 1971.1/

20. Within the ten-year period preceding the filing of this action, Roanoke County and the governmental units within the County have made submissions of 158 changes affecting voting for preclearance review under Section 5 of the Voting Rights Act. 42 U.S.C. § 1973c.

21. Within the ten years preceding the filing of this action, Roanoke County and the town of Vinton have enforced a number of voting changes prior to Section 5 preclearance. These voting changes included six annexations (boundary changes) by the County and the town of Vinton, a March 16, 1992 amendment of Vinton's town charter that permits town council members to become candidates for filling a vacancy in the mayoral seat, and an April 7, 1998 amendment of Vinton's town charter that changes the timing of filling vacancies for mayor and town council members. All of these voting changes were

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1/ However, article II, § 2 of Virginia's 1971 Constitution still permits the General Assembly to adopt literacy tests. This provision is superseded by the passage of Section 201 of the Voting Rights Act in 1970, which imposed a nationwide ban on the use of literacy tests. See Pub. L. No. 91-285, § 6, 84 Stat. 315, 84 Stat. 315 (1970); see also Oregon v. Mitchell, 400 U.S. 112 (1970) (affirming constitutionality of the permanent literacy test ban), made permanent in 1975. See Pub. L. No. 94-73, § 102, 89 Stat. 400 (1975) (codified as amended at 42 U.S.C. § 1973aa).

submitted to the Attorney General for Section 5 review immediately before the present action was filed. All of these voting changes have been precleared.

22. There is no indication that any person in Roanoke County has been denied the right to vote on account of race or color during the past ten years.

23. No "test or device" as defined in the Voting Rights Act (42 U.S.C. §1973b(c))has been used in Roanoke County for the preceding ten years.

24. There is no indication that Roanoke County has been the subject of any lawsuit in which it was alleged that a person (or persons) was being denied the right to vote on account of race, color, or membership in a language minority group. No Court of the United States has issued a final judgment to this effect. See 42 U.S.C. § 1973b(a)(1)(B).

25. There is no indication that any voting practices or procedures have been abandoned by the County or challenged on the grounds that such practices or procedures would have either the purpose or the effect of denying the right to vote on account of race or color. See 42 U.S.C. § 1973b(a)(1)(B).

26. No Federal Examiners have ever been appointed or assigned to Roanoke County pursuant to Section 3 or Section 6 of the Voting Rights Act. See 42 U.S.C. § 1973b(a)(1)(C).

27. The Attorney General has not interposed any objection to a change affecting voting in Roanoke County and no declaratory judgment has been denied under Section 5 of the Voting Rights Act, and no such submissions or declaratory judgment actions are pending. Roanoke County has never sought Section 5 judicial preclearance from this Court. See 42 U.S.C. § 1973b(a)(1)(E).

28. There is no indication that the County employs any voting procedures or methods of election that inhibit or dilute equal access to the electoral process in the County. See 42 U.S.C. § 1973b(a)(1)(F)(i).

29. The County and its governmental units have not engaged in other constructive efforts to eliminate intimidation and harassment of persons exercising rights protected under the Voting Rights Act because there is no evidence that any such incidents have occurred in the County in the last ten years. See 42 U.S.C. § 1973b(a)(1)(F)(ii).

30. The County and its governmental units have engaged in other constructive efforts, "such as expanded opportunity for convenient registration and voting for every person of voting age and the appointment of minority persons as election officials throughout the jurisdiction and at all stages of the election and registration process." See 42 U.S.C. § 1973b(a)(1)(F)(iii).

31. Voter registration opportunities in the County are readily and equally available to all citizens. The voter registration office for the County is located in the County Administration Building, which is a central location within the County. The voter registration office is open from 8 a.m. to 5 p.m. Monday through Friday.

32. Voters in Roanoke County also may register by mail, and other voter registration applications are available at all County post offices, branches of the County library, the School Board's administrative offices, the Clerk of Court's office, and in the lobby of the County Administration Building. In addition, the Registrar of Voters registers eligible students at the public high schools every March, and at a number of neighborhood registration sites around the County throughout the year.

33. The opportunity to become a registered voter in Roanoke County also is available under the National Voter Registration Act (the "NVRA") at DMV offices and public assistance agencies in Roanoke County. While in past years most voters became registered at the County Board of Registrars or at one of the voter registration locations throughout the County, the implementation of the NVRA in Virginia over the last few years has changed the origin of the great majority of registration applications. Today, most of the County's new voters register through the DMV and by mail.

34. Polls open in the County at 6:00 a.m. and close at 7:00 p.m., as is the case throughout the Commonwealth of Virginia.

35. Roanoke County's three-member Electoral Board, which is appointed by the County Circuit Court judges, nominates a roster of persons each February to work as poll officials. The appointment of poll officials is for a one-year term. Recommendations of persons to be appointed as poll workers originate with the chairs of the local Democratic and Republican parties. In the preceding ten years, no member of a minority group has been denied an appointment to serve as a poll official.

36. There is no indication that any eligible Roanoke County resident who has expressed an interest in becoming an election official has been denied the opportunity to do so within the past ten years. In addition, in recent years, the State's voter registration applications (including the one used at DMV and public assistance agencies throughout Roanoke County) have included a special section soliciting persons to serve as poll officials. All voters expressing an interest in serving as a poll official on these applications have been referred to the Electoral Board for consideration and appointment.

37. According to records maintained by the County's Voter Registrar, the number of black poll officials is slightly lower than the black percentage of 2.5% of the voting age population, with 5

blacks currently serving out of approximately 245 poll officials (about 2.0% of the total number of poll officials).2/

38. No evidence of increased minority voter participation is available because Virginia does not track voter registration and turnout by race. The overall level of voter registration has increased, although voter turnout has dropped off in recent years for reasons apparently unrelated to race. See 42 U.S.C. § 1973b(a)(2).

39. There are no known incidents in Roanoke County where persons exercising their right to vote at the polls have been intimidated or harassed.

40. There is no indication that the County has engaged in violations of any provision of the Constitution or laws of the United States or any State or political subdivision with respect to discrimination in voting on account of race or color. See 42 U.S.C. § 1973b(a)(3).

41. Roanoke County has publicized the intended commencement of this action prior to its commencement in local newspapers of general circulation and in appropriate United States post offices throughout the County in accordance with 42 U.S.C. §1973b(a)(4). Notices have remained posted throughout the litigation process. The County has posted notices regarding the proposed settlement at the Registrar's

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2/ In addition, three other black voters recently served as poll officials until they had to stop because they either moved out of the County or had to retire for health reasons.

Office, government offices, post offices, and at the town hall in Vinton. In addition, the County has given notice of its intent to seek bailout through the County's web page (www.co.roanoke.va.us) and on the local public access television station. The County published its notice of bailout in the local newspaper, The Roanoke Times and World News, on December 17 and 19, 1999, and published the notice of its intent to file a proposed settlement in The Roanoke Times and World News on August 16, 2000. The Roanoke Times and World News is a daily newspaper whose circulation reaches persons throughout the County.

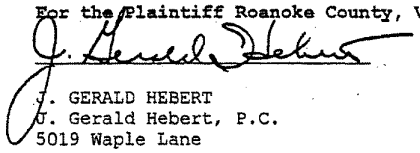
42. The United States has determined that it is appropriate to consent to a declaratory judgment in this action, pursuant to Section 4(a)(9) of the Voting Rights Act, notwithstanding the enforcement of certain voting changes prior to Section 5 preclearance. This consent is premised upon an understanding that Congress intended Section 4(a)(9) to permit bailout in those cases where the Attorney General is satisfied that the statutory objectives of encouraging Section 5 compliance and preventing the use of racially discriminatory voting practices would not be compromised by such consent.

43. The United States' consent in this action is based upon its own factual investigation and consideration of all of the circumstances in this case, including the views of minority citizens in the County, the fact that there are no defendant-intervenors, the

affirmative steps taken by the County to increase voter participation, and the absence of evidence of racial polarization or discrimination in the electoral process within the County. See 42 U.S.C. § 1973b(a)(9). The United States' consent also is based upon the fact that the voting changes enforced without Section 5 preclearance were submitted promptly and precleared once brought to Plaintiffs' attention, and the absence of any indication that the failure to submit those changes was intended to evade a Section 5 objection. In these circumstances, where the political subdivision seeking bailout otherwise meets the statutory requirements, the United States believes that a bailout should be granted.

Approved as to form and content:

For the Plaintiff Roanoke County, Virginia



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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ROANOKE COUNTY, VIRGINIA,	)	
Plaintiff,	)	
v.	)	C.A. No. 1:00CV01949
JANET RENO, Attorney General of the United States of America BILL LANN LEE, Assistant Attorney General, Civil Rights Division,	)	(RMU, DST, JR) (three-judge court)
Defendants.	)	

FILED
JAN 24 2001
NANCY MAYER WHITTINGTON, CLERK
U.S. DISTRICT COURT

CONSENT JUDGMENT AND DECREE

This action was initiated by Roanoke County, a political subdivision of the Commonwealth of Virginia (hereafter "the County"). The County is subject to the provisions of Section 5 of the Voting Rights Act of 1965, as amended. 42 U.S.C. § 1973c. The County seeks a declaratory judgment under Section 4 of the Voting Rights Act, 42 U.S.C. § 1973b. A three-judge Court has been convened as provided in 42 U.S.C. § 1973b(a)(5) and 28 U.S.C. § 2284.

Section 4(a) of the Voting Rights Act provides that a State or political subdivision subject to the special provisions of the Act may be exempted from those provisions if it can demonstrate in an action for a declaratory judgment before the United States District Court for the District of Columbia that it has both (1) complied with the Voting Rights Act during the ten-year period prior to filing the

action; and (2) taken positive steps both to encourage minority political participation and to remove structural barriers to minority electoral influence.

To demonstrate compliance with the Voting Rights Act during the ten year period preceding the filing of the declaratory judgment action under Section 4(a), Roanoke County and its governmental units must prove the following five conditions: (1) that they have not used any test or device that has the purpose or effect of denying or abridging the right to vote on account of race or color; (2) no final judgment of any Court of the United States has determined that denials or abridgements of the right to vote on account of race or color have occurred anywhere in the County and its governmental units and no consent decree, settlement, or agreement has been entered into before or during the pendency of the declaratory judgment action that results in the abandonment of such a practice; (3) no Federal examiners under the Voting Rights Act have been assigned to the County or its governmental units; (4) the County and its governmental units have complied with Section 5 of the Voting Rights Act, including submission of all changes covered by Section 5 and repeal of all covered changes to which the Attorney General has successfully objected or the District Court of the District of Columbia has denied a declaratory judgment; and (5) the Attorney General has not interposed any objection not overturned by final judgment of a court

and no Section 5 declaratory judgment action has been denied, with respect to any submissions by the County and its governmental units, and no such submissions or declaratory judgment actions are pending. 42 U.S.C. § 1973b(a)(1)(A)-(E).

In addition, Roanoke County and its governmental units must demonstrate the steps they have taken to encourage minority political participation and to remove structural barriers to minority electoral influence by showing the following: (1) elimination of voting procedures and elections methods which inhibit or dilute equal access to the electoral process; (2) constructive efforts to eliminate intimidation and harassment of persons exercising rights protected under the Voting Rights Act; and (3) other constructive efforts, such as convenient registration and voting for every person of voting age and the appointment of minority persons as election officials throughout the County and at all stages of the election and registration process. 42 U.S.C. § 1973b(a)(1)(F)(i)-(iii).

To assist the Court in determining whether to issue a declaratory judgment, Roanoke County and its governmental units also must present evidence of minority participation, including the levels of minority group registration and voting, changes in those levels over time, and disparities between minority-group and non-minority-group participation. 42 U.S.C. § 1973b(a)(2). Furthermore, the County and its governmental units must demonstrate that during the

ten years preceding judgment they have not violated any provision of the Constitution or federal, state, or local law governing voting discrimination, unless they show any such violations were trivial, promptly corrected, and not repeated. 42 U.S.C. § 1973b(a)(3). Finally, Roanoke County and its governmental units must publicize their intent to commence a declaratory judgment action and any proposed settlement of the action. 42 U.S.C. § 1973b(a)(4).

If Roanoke County and its governmental units show "objective and compelling evidence" that they have satisfied the foregoing requirements, as confirmed by the Department's independent investigation, the Attorney General is authorized to consent to entry of a judgment granting an exemption to coverage under Section 5 of the Voting Rights Act. 42 U.S.C. § 1973b(a)(9).

The Defendant United States has conferred with Plaintiff Roanoke County and, upon investigation, has agreed that the Plaintiff is entitled to the requested declaratory judgment, subject to annual reporting requirements for a period of four years to which the parties have agreed as a basis for resolving this action. 42 U.S.C. § 1973b(a)(9). The parties have filed a joint motion, accompanied by a Stipulation of Facts, for entry of this Consent Judgment and Decree.

FINDINGS

Pursuant to the parties' Stipulations and joint motion, this Court finds as follows:

1. Roanoke County is a political subdivision of the Commonwealth of Virginia, and a political subdivision of a state within the meaning of Section 4(a) of the Voting Rights Act, 42 U.S.C. § 1973b(a)(1). See Stipulation of Facts, ¶ 1.

2. There are two separate governmental units within Roanoke County: the town of Vinton and the Roanoke County School Board. See Stipulation of Facts, ¶ 3.

3. The independent cities of Roanoke City, Virginia and Salem City, Virginia are not governmental units of Roanoke County, Virginia and are not parties to this bailout action. See Stipulation of Facts, ¶ 4.

4. Roanoke County is a covered jurisdiction subject to the special provisions of the Voting Rights Act, including Section 5 of the Act, 42 U.S.C. § 1973c. See Stipulation of Facts, ¶ 5.

5. Roanoke County was designated as a jurisdiction subject to the special provisions of the Voting Rights Act on the basis of the determinations made by the Attorney General that Virginia maintained a "test or device" as defined by section 4(b) of the Act, 42 U.S.C. § 1973b(b), on November 1, 1964, and by the Director of the Census that fewer than 50 percent of the persons of voting age residing in the

state voted in the 1964 presidential election. See Stipulation of Facts, ¶ 19.

6. No person in Roanoke County has been denied the right to vote on account of race or color during the past ten years. See Stipulation of Facts, ¶ 22.

7. No "test or device" as defined in Section 4(c) of the Voting Rights Act, 42 U.S.C. § 1973b(c), has been used in Roanoke County for the preceding ten years. See Stipulation of Facts, ¶ 23.

8. No Court of the United States has issued a final judgment during the last ten years prior to the commencement of this action that the right to vote has been denied or abridged on account of race or color in Roanoke County, and no consent decree, settlement, or agreement has been entered into resulting in any abandonment of a voting practice challenged on such grounds during that time. No such claims presently are pending or were pending at the time this action was filed. See Stipulation of Facts, ¶ 24.

9. No voting practices or procedures have been abandoned by the County or challenged on the grounds that such practices or procedures would have either the purpose or the effect of denying the right to vote on account of race or color. See Stipulation of Facts, ¶ 25.

10. No Federal Examiners have ever been appointed or assigned to Roanoke County pursuant to Section 3 or Section 6 of the Voting

Rights Act. See Stipulation of Facts, ¶ 26.

11. The Attorney General has not interposed any objection to a change affecting voting in Roanoke County and no declaratory judgment has been denied under Section 5 of the Voting Rights Act, and no such submissions or declaratory judgment actions are pending. Roanoke County never has sought Section 5 judicial preclearance from this Court. See Stipulation of Facts, ¶ 27.

12. The County does not employ any voting procedures or methods of election that inhibit or dilute equal access to the electoral process in the County. See Stipulation of Facts, ¶ 28.

13. The County and its governmental units have not engaged in other constructive efforts to eliminate intimidation and harassment of persons exercising rights protected under the Voting Rights Act because there is no evidence that any such incidents have occurred in the County in the last ten years. See Stipulation of Facts, ¶ 29.

14. The County and its governmental units have engaged in other constructive efforts that have provided expanded opportunity for convenient registration and voting for persons of voting age, and the County has appointed some minority persons as election officials. See Stipulation of Facts, ¶¶ 30-37.

15. No evidence of increased minority participation is available because Virginia does not track voter registration and turnout by race. The overall level of voter registration has

increased, although voter turnout has dropped off in recent years for reasons apparently unrelated to race. See Stipulation of Facts, ¶ 38.

16. There are no known incidents in Roanoke County where persons exercising their right to vote at the polls have been intimidated or harassed. See Stipulation of Facts, ¶ 39.

17. There is no evidence that the County has violated any provision of the Constitution or laws of the United States or any State or political subdivision with respect to discrimination in voting on account of race or color. See Stipulation of Facts, ¶ 40.

18. Roanoke County has publicized the intended commencement of this action prior to its commencement in local newspapers of general circulation and in appropriate United States post offices throughout the County in accordance with 42 U.S.C. §1973b(a)(4). See Stipulation of Facts, ¶ 41. No aggrieved party has sought to intervene in this action pursuant to 42 U.S.C. §1973b(a)(4).

19. Roanoke County and the governmental units within the County have obtained Section 5 preclearance for all voting changes enforced within Roanoke County during the ten-year period preceding this action. However, preclearance was not obtained in a timely manner, i.e. before the changes were enforced, with respect to six annexations and boundary changes by the County and the town of Vinton, a March 16, 1992 amendment of Vinton's town charter that

permits town council members to become candidates for filling a vacancy in the mayoral seat, and an April 7, 1998 amendment of Vinton's town charter that changes the timing of filling vacancies for mayor and town council members. All of these voting changes were submitted to the Attorney General for Section 5 review immediately before the present action was filed, and have been precleared. See Stipulation of Facts, ¶ 21.

20. As a basis for resolving this action, the parties have agreed that Roanoke County will be subject to annual reporting requirements for a period of four years. The County will submit to the United States an annual Report documenting all voting changes adopted by the County as well as the two governmental units within the County during each calendar year. The first Report will be due December 15, 2000, and subsequent Reports will be due each December 15, thereafter.

Accordingly, it is hereby ORDERED, ADJUDGED and DECREED:

A. The Plaintiff Roanoke County, Virginia, is entitled to a declaratory judgment in accordance with Section 4(a)(1) of the Voting Rights Act, 42 U.S.C. § 1973b(a)(1);

B. The parties' Joint Motion for Entry of Consent Judgment and Decree is GRANTED, and Roanoke County, including the town of Vinton and the Roanoke County School Board shall be exempt from coverage pursuant to Section 4(b) of the

Voting Rights Act, 42 U.S.C. § 1973b(b), provided that Roanoke County be subject to annual reporting requirements as provided in paragraph 20, and provided that this Court shall retain jurisdiction over this matter for a period of ten years.

C. This action shall be closed and placed on this Court's inactive docket, subject to being reactivated upon application by either the Attorney General or any aggrieved person in accordance with the procedures set forth in 42 U.S.C. §1973b(a)(5).

D. The parties shall bear their own costs.

Entered this 23 day of January 2001.

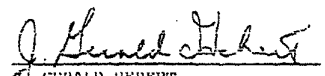
UNITED STATES CIRCUIT JUDGE

UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT JUDGE

Approved as to form and content:

For the Plaintiff Roanoke County, Virginia



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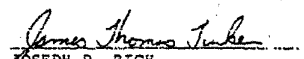

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IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

ROCKINGHAM COUNTY, VIRGINIA, a political subdivision of the Commonwealth of Virginia, 345 South Main Street, Harrisonburg, Virginia 22801,

Plaintiff,

v.

JOHN ASHCROFT, Attorney General of the United States of America, RALPH F. BOYD, JR., Assistant Attorney General, Civil Rights Division, United States Department of Justice, Washington, DC,

Defendants.

CASE NUMBER 1:02CV00391
JUDGE: Ellen Segal Huvelle
DECK TYPE: 3-Judge Court
DATE STAMP: 02/28/2002

Three-Judge Court Requested

COMPLAINT

Rockingham County alleges that:

1. This is an action brought for declaratory relief pursuant to Section 4 of the Voting Rights Act of 1965, as amended, 42 U.S.C. §1973b (hereinafter "Section 4"). This Court has jurisdiction over this action pursuant to 28 U.S.C. §1343(a)(4), 28 U.S.C. §2201, 42 U.S.C. §1973b, and 42 U.S.C. §1973l(b).

2. Plaintiff Rockingham County ("the County") is a political subdivision of the Commonwealth of Virginia. Rockingham County, Virginia, is located in the Shenandoah Valley, approximately 100 miles from Washington, DC.

3. Located within Rockingham County, but wholly operating as an independent city and separate political subdivision of the Commonwealth of Virginia, is the City of Harrisonburg, Virginia. County residents of Rockingham County are not eligible to vote in City of Harrisonburg elections and City of Harrisonburg residents are not eligible to vote in Rockingham County elections.

4. The Rockingham County Board of Supervisors is the governing body that formulates policies for the administration of Rockingham County. It is comprised of five members elected from five single-member districts to serve four-year terms. Terms of office are staggered such that two supervisors are up for election in one year and then three supervisors are up for election two years later. The County Board of Supervisors appoints a County Administrator to serve as the County's chief administrative officer.

5. The five Board of Supervisors districts contain a total of 26 polling locations, located conveniently to voters across the County. There are at least five polling locations in each Board of Supervisor district.

6. There are eight governmental units operating within Rockingham County. Seven of these are the town governments of Bridgewater, Dayton, Elkton, Broadway, Grottoes, Timberville, and Mt. Crawford. The other governmental unit operating within Rockingham County is the Rockingham County School Board. The School Board is a five-member body elected from the same districts as the County Board of Supervisors. Terms of office for the School Board are staggered in the same manner as the positions for the Board of Supervisors.

7. According to the 2000 census, Rockingham County, Virginia has a total population of 67,725. Of this number, 924 persons (or 1.4%) are black and 2221 (or 3.3%) are Hispanic. The voting age population of the County, according to the 2000 census, is 51,046. Of this number, 663 (1.3%) are black and 1378 (2.7%) are Hispanic.

8. Like other jurisdictions in the Commonwealth of Virginia, Rockingham County does not collect or maintain voter registration data by race. As of November 2000, there were 33,341 registered voters in Rockingham County. The number of registered voters in the County has risen over the last couple of decades. In 1982, for example, there were only 20,967 registered voters in the County. By 1992, the number of registered voters had grown to 24,378. By 1996, the number had risen to 27,623.

9. The number of registered voters in the County has grown even more dramatically over the last six years. From 1996 to 2000, the number of registered voters in the County grew by 20.7%, from 27,623 in 1996 to 33,341 in 2000). Today, there are 34,674 registered voters in Rockingham County.

10. Voter turnout in elections varies according to the offices up for election. In the two most recent Presidential elections, for example, approximately 79.6% (November 1996) and 77.2% (November 2000) of the County's electorate turned out to vote. In the General Election for Governor held in November 2001, over 18,400 persons, or 54.4% of the County's registered voters, turned out to vote. Voter turnout for the Rockingham County Board of Supervisors elections in the last five cycles has been 37.8%, 31.1%, 33.6%, 10.3%, and 38.8%, respectively.

11. As a political subdivision of the Commonwealth of Virginia, plaintiff Rockingham County has been subject to certain special remedial provisions of the Voting Rights Act, including the provisions of Section 5 of the Act, 42 U.S.C. §1973c. Under Section 5 of the Act, known as the "preclearance" provisions, covered jurisdictions, including Rockingham County, are required to seek and obtain preclearance from either this Court or from the United States Attorney General of any change affecting voting, and such preclearance must be obtained prior to implementation.

12. Since its inception in 1965, the Voting Rights Act has allowed the States and political subdivisions, which are subject to these special provisions of the Act, to exempt themselves from coverage under the Act's special remedial provisions, if they can satisfy standards established in the Voting Rights Act.

13. In 1982, Congress made changes in the exemption standards of the Act. As amended in 1982, Section 4 of the Voting Rights Act provides that States and political subdivisions covered under the special provisions of the Act are entitled to a declaratory judgment in this Court granting an exemption from the Act's special remedial provisions if, during the ten years preceding the filing of the action:

> A) no test or device has been used either for the purpose or with the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group, within the State or political subdivision seeking a declaratory judgment;
> B) no final judgment has been entered by any court determining that the political subdivision has denied or abridged the right to vote on account of race, color, or membership in a language minority group;
> C) no Federal examiners have been assigned to the political subdivision;
> D) all governmental units within the political subdivision have complied with the preclearance provisions of Section 5 of the Voting Rights Act, 42 U.S.C. 1973c; and
> E) the Attorney General has not interposed any objection to any proposed voting change within the political subdivision and no declaratory judgment has been denied with regard to such a change by this Court under Section 5.

14. As amended in 1982, Section 4 of the Act also requires States and political subdivisions seeking an exemption from the Act's special provisions to show that, during the pendency of the declaratory judgment action seeking such exemption:

> A) Any voting procedure or method of election within the state or political subdivision exists which inhibits or dilutes equal access to the electoral process has been eliminated;
> B) Constructive efforts have been made by the political subdivision to eliminate any intimidation or harassment of persons exercising rights under the Voting Rights Act; and
> C) Expanded opportunities for convenient registration and voting exists within the State or political subdivision.

15. As described in each of the paragraphs set forth below, Rockingham County has fully complied with the provisions of Section 4 of the Act as set forth in paragraphs 13 and 14, *supra*.

16. Over the years, Rockingham County has made numerous submissions to the Department of Justice seeking preclearance of voting changes under Section 5 of the Voting Rights Act. Since 1983, for example, the County has made a timely submission of over 30 voting changes to the Department of Justice for Section 5 preclearance. The defendant Attorney General has approved each and every voting change that has been submitted by the County for preclearance under the Voting Rights Act. Since passage of the Voting Rights Act in 1965, not a single objection has been interposed by the Department of Justice to any voting change in Rockingham County. In approving each and every change, the defendants have concluded that the voting changes submitted were free of a racially discriminatory purpose or a racially discriminatory effect. Many of the voting changes made over the years in Rockingham County and submitted for Section 5 preclearance actually expanded the opportunities for County residents to become registered voters and to cast ballots.

17. Voter registration opportunities in the County are readily and equally available to all citizens. The voter registration office for the County is located in downtown Harrisonburg, a central and convenient location for County residents. The voter registration office is office is open from 8 a.m. to 1:15 p.m., and from 2:15 pm to 5 p.m., Monday through Friday.

18. Voters in Rockingham County may also register by mail, and voter registration applications are available at locations throughout the County.

19. The opportunity to become a registered voter in Rockingham County is also available under the National Voter Registration Act (the "NVRA") at DMV offices and public assistance agencies in Rockingham County. While in past years most voters became registered at the County's voter registration office, the implementation of the NVRA in Virginia over the last decade has changed the origin of the great majority of registration applications. Today, most of the County's new registrants register through the DMV and by mail.

20. Rockingham County also has a three-member Electoral Board pursuant to Virginia state law, and the Electoral Board nominates a roster of persons each February to work as poll workers. The appointment of poll workers is for a one-year term. Recommendations of persons to be appointed as poll workers originate with the chairs of the local Democratic and Republican parties. Not a single person recommended by a political party chair to serve as a poll official has ever been rejected by the Electoral Board.

21. Because the County has found it difficult over the years to find enough persons willing to serve as poll officials, the Rockingham County General Registrar has actively recruited persons to work at the polls and has even designed brochures seeking qualified persons to serve as poll officials. These brochures are publicly available at the Registrar's office, County offices, and the Commissioner of Revenue and Treasurer's offices. Not a single eligible Rockingham County resident who has expressed an interest in becoming an election official has ever been denied the opportunity to do so. In addition, in recent years, the State's voter registration applications (including the one used at DMV and public assistance agencies in Rockingham County) have included a special section soliciting persons to serve as poll officials.

22. Although the number of minority citizens in Rockingham County is quite small, minority citizens have nonetheless played an active role in the political process. For example, the Rockingham County Board of Supervisors has had one Hispanic member since 1990, and this member served as Chairperson of the Board of Supervisors in 1991, 1995, and 2001. Not a single minority candidate who has sought election to the Rockingham County Board of Supervisors or to the Rockingham County School Board has been defeated.

23. No person in Rockingham County has been denied the right to vote on account of race, color, or membership in language group since at least the time the Voting Rights Act was enacted in 1965.

24. No "test or device" as defined in the Voting Rights Act (42 U.S.C. §1973b(c)) has been used in Rockingham County as a prerequisite to either registering or voting for at least the preceding ten years.

25. Rockingham County has never been the subject of any lawsuit in which it was alleged that a person (or persons) was being denied the right to vote on account of race, color, or membership in a language minority group.

26. No voting practices or procedures have been abandoned by the County or challenged on the grounds that such practices or procedures would have either the purpose or the effect of denying the right to vote on account of race, color, or membership in a language minority group,

27. Rockingham County has not employed any voting procedures or methods of election that inhibit or dilute equal access to the electoral process by minority voters in the County. Under the County's current election method, minority voters are not being denied an equal opportunity to elect candidates of their choice to the County Board of Supervisors, to the County School Board, or any of the Town governmental bodies.

28. Federal examiners have never been appointed or assigned to Rockingham County under Section 3 of the Voting Rights Act, 42 U.S.C. §1973a.

29. There are no known incidents in Rockingham County where any person exercising his or her right to vote has been intimidated or harassed at the polls (or while attempting to register to vote).

30. The allegations set forth in paragraphs 16 through 29, above, if established, entitle Rockingham County to a declaratory judgment under Section 4 of the Voting Rights Act, 42 U.S.C. §1973b, exempting the County and the governmental units within the County from the special remedial provisions of the Voting Rights Act.

31. Pursuant to 42 U.S. C. §1973b, Rockingham County has "publicize[d] the intended commencement ...of [this] action in the media serving [the County] and in the appropriate United States post offices." The County published a legal Notice that it intended to commence this bailout action in the Daily News-Record, a daily newspaper of general circulation in and around Rockingham County on October 29, 2001, and November 5, 2001. In addition, the County posted copies of the Notice in post offices in Rockingham County and in other public locations, including the County Courthouse and Office of Voter Registration.

WHEREFORE, plaintiff Rockingham County respectfully prays that this Court:

A. Convene a three-judge court, pursuant to 28 U.S.C.§2284 and 42 U.S.C. §1973b, to hear the claims raised in plaintiff's complaint;

B. Enter a declaratory judgment that Rockingham County is entitled to a bailout from the special remedial provisions of the Voting Rights Act; and

C. Grant such other relief as may be necessary and proper as the needs of justice may require.

For Plaintiff Rockingham County:

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IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF COLUMBIA

ROCKINGHAM COUNTY, VIRGINIA, a political subdivision of the Commonwealth of Virginia,	FILED MAY 21 2002 NANCY MAYER WHITTINGTON, CLERK U.S. DISTRICT COURT
Plaintiff,	
v.	Case No. 1:02CV00391
	Judge: Ellen Segal Huvelle
JOHN D. ASHCROFT, Attorney General of the United States of America, RALPH F. BOYD, JR., Assistant Attorney General, Civil Rights Division, United States Department of Justice, Washington, D.C.,	3-Judge Court
Defendants.	

CONSENT JUDGMENT AND DECREE

This action was initiated by Rockingham County, a political subdivision of the Commonwealth of Virginia (hereafter "the County"). The County is subject to the provisions of Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. §1973c. The County seeks a declaratory judgment under Section 4 of the Voting Rights Act of 1965, as amended, 42 U.S.C. §1973b. A three-judge court has been convened as provided in 42 U.S.C. §1973b(a)(5) and 28 U.S.C. §2284.

Section 4(a) of the Voting Rights Act provides that a state or political subdivision subject to the special provisions of the Act may be exempted from those provisions if it can demonstrate in an action for a declaratory judgment before the United States

a b

District Court for the District of Columbia that it has both 1) complied with the Voting Rights Act during the ten-year period prior to filing the action, and 2) taken positive steps both to encourage minority political participation and to remove structural barriers to minority electoral influence.

In order to demonstrate compliance with the Voting Rights Act during the ten-year period prior to commencement of a declaratory judgment action under Section 4(a), the County must satisfy five conditions: 1) the County has not used any test or device during that ten-year period for the purpose or with the effect of denying or abridging the right to vote on account of race or color; 2) no court of the United States has issued a final judgment during that ten-year period that the right to vote has been denied or abridged on account of race or color within the territory of the County, and no consent decree, settlement or agreement may have been entered into during that ten-year period that resulted in the abandonment of a voting practice challenged on such grounds; and no such claims may be pending at the time the declaratory judgment action is commenced; 3) no Federal examiners have been assigned to the County pursuant to the Voting Rights Act during the ten-year period preceding commencement of the declaratory judgment action; 4) the County and all governmental units within its territory must have complied with Section 5 of the Voting Rights Act, 42 U.S.C.§1973c, during that

ten-year period, including the requirement that voting changes covered under Section 5 not be enforced without Section 5 preclearance, and that all voting changes denied Section 5 preclearance by the Attorney General or the District Court for the District of Columbia have been repealed; and 5) neither the Attorney General nor the District Court for the District of Columbia have denied Section 5 preclearance to a submission by the County or any governmental unit within its territory during that ten-year period, nor may any Section 5 submissions or declaratory judgment actions be pending. 42 U.S.C. §1973b(a)(1)(A-E).

In addition, to obtain the declaratory judgment, the County and all governmental units within its territory must have eliminated voting procedures and methods of election that inhibit or dilute equal access to the electoral process. 42 U.S.C. §1973b(a)(1)(F)(i). In addition, the County must have engaged in constructive efforts to eliminate intimidation or harassment of persons exercising voting rights, and to expand the opportunity for convenient registration and voting for every person of voting age, and the appointment of minority persons as election officials throughout the jurisdiction and at all stages of the election and registration process. 42 U.S.C. §1973b(a)(1)(F)(ii-iii).

The County is required to present evidence of minority participation in the electoral process, including the levels of minority group registration and voting, changes in such levels over time, and disparities between minority group and non-minority group participation. 42 U.S.C. §1973b(a)(2). In the ten years preceding bailout, the County must not have engaged in violations of any provision of the Constitution or laws of the United States or any State or political subdivision with respect to discrimination in voting on account of race or color. 42 U.S.C. §1973b(a)(3). Finally, the County must provide public notice of its intent to seek a Section 4(a) declaratory judgment. 42 U.S.C. §1973b(a)(4).

The Defendant United States has conferred with Plaintiff Rockingham County and, after investigation, has agreed that the Plaintiff is entitled to the requested declaratory judgment, subject to the submission of a report detailing the County's efforts to hire minority persons as poll officials, to be filed one year from entry of this Consent Judgment and Decree. 42 U.S.C. §1973b(a)(9). The parties have filed a joint motion, accompanied by a Stipulation of Facts, for entry of this Consent Judgment and Decree.

FINDINGS

Pursuant to the parties' stipulations and joint motion, this Court finds as follows:

1. Rockingham County is a political subdivision of the Commonwealth of Virginia, and a political subdivision of a state within the meaning of Section 4(a) of the Voting Rights Act, 42 U.S.C. §1973b(a)(1). See: Stipulation of Facts, ¶ 1.

2. Additional governmental units within Rockingham County include the Rockingham County School Board and the town governments of Bridgewater, Broadway, Dayton, Elkton, Grottoes, Mt. Crawford, and Timberville. See: Stipulation of Facts, ¶ 2.

3. Rockingham County is a covered jurisdiction subject to the special provisions of the Voting Rights Act, including Section 5 of the Act, 42 U.S.C. § 1973c. See: Stipulation of Facts, ¶ 3.

4. Rockingham County was designated as a jurisdiction subject to the special provisions of the Voting Rights Act on the basis of the determinations made by the Attorney General that Virginia maintained a "test or device" as defined by section 4(b) of the Act, 42 U.S.C. § 1973b(b), on November 1, 1964, and by the Director of the Census that fewer than 50 percent of the persons of voting age residing in the state voted in the 1964 presidential election. See: Stipulation of Facts, ¶ 4.

5. No discriminatory test or device has been used by Rockingham County during the ten years prior to the commencement of this action for the purpose or with the effect of denying or abridging the right to vote on account of race or color. See:

Stipulation of Facts, ¶ 19.

6. No person in Rockingham County has been denied the right to vote on account of race or color during the past ten years. See: Stipulation of Facts, ¶ 18.

7. No court of the United States has issued a final judgment during the last ten years prior to the commencement of this action that the right to vote has been denied or abridged on account of race or color in Rockingham County, and no consent decree, settlement, or agreement has been entered into resulting in any abandonment of a voting practice challenged on such grounds during that time. No such claims presently are pending or were pending at the time this action was filed. See: Stipulation of Facts, ¶ 21.

8. No Federal Examiners have been assigned to Rockingham County within the ten-year period preceding this action. See: Stipulation of Facts, ¶ 23.

9. Rockingham County and its governmental units have enforced only one voting change prior to receiving Section 5 preclearance during the ten-year period preceding this action. That voting change has been submitted and precleared. See: Stipulation of Facts, ¶ 16.

10. All voting changes submitted by Rockingham County and its governmental units under Section 5 have been precleared by the Attorney General. No Section 5 submissions by the County or

its governmental units presently are pending before the Attorney General. The County and its governmental units have never sought Section 5 judicial preclearance from this Court. See: Stipulation of Facts, ¶ 17.

11. No voting practices or procedures have been abandoned by Rockingham County or challenged on the grounds that such practices or procedures would have either the purpose or the effect of denying the right to vote on account of race or color during the ten-year period preceding this action. See: Stipulation of Facts, ¶ 21.

12. Rockingham County does not employ voting procedures or methods of election which inhibit or dilute equal access to the electoral process by the County's minority citizens. See: Stipulation of Facts, ¶ 22.

13. There is no indication that in the past ten years any persons in Rockingham County have been subject to intimidation or harassment in the course of exercising their right to participate in the political process. See: Stipulation of Facts, ¶ 24.

14. Because there is no evidence that any voters in Rockingham County have been subjected to intimidation or harassment within the last ten years, neither Rockingham County nor any of its governmental units have been required to take any constructive efforts to eliminate such intimidation and harassment of persons exercising rights protected under the

Voting Rights Act. See: Stipulation of Facts, ¶ 24.

15. Rockingham County has engaged in constructive efforts to enhance registration and voting opportunities for all of its citizens of voting age by adding hours during which to register to vote and polling locations at which to vote. Despite these efforts, and other good faith efforts generally undertaken by the County to solicit and encourage County residents to serve as poll officials, the County has found it difficult to recruit citizens to serve in the election process as poll officials. This has been especially true with respect to the County's minority population, although this difficulty respecting the recruitment of minority poll officials would appear to be due, at least in part, to the small percentage of minority group persons living in Rockingham County. See: Stipulation of Facts, ¶¶ 5-7 and 12-14.

16. Since Rockingham County does not record the race of its registered voters, it is unable to present evidence directly measuring minority voter participation, but the County has provided evidence of voter participation to the extent possible. See: Stipulation of Facts, ¶¶ 6-7.

17. Rockingham County has not engaged, within the ten years prior to the commencement of this action, in violations of the Constitution or laws of the United States or any State or political subdivision with respect to discrimination in voting on account of race or color. See: Stipulation of Facts, ¶ 19.

18. Rockingham County has publicized the intended commencement and proposed settlement of this action in the media and in appropriate United States post offices as required under 42 U.S.C. §1973b(a)(4). No aggrieved party has sought to intervene in this action pursuant to 42 U.S.C. §1973b(a)(4). See: Stipulation of Facts, ¶ 25.

19. As a basis for resolving this action, the parties have agreed that Rockingham County will submit a report to the Department of Justice one year from the date of entry of this Consent Judgment and Decree. During this one-year period, the County agrees to make a good faith effort to recruit minority persons to serve as poll officials. The County further agrees that this report will include the number of minority persons who have served as poll officials, as well as any efforts County officials have made to recruit minority poll workers. By way of example only, County officials may contact leaders in the African-American and Hispanic communities, including officeholders and candidates, along with churches or other organizations, whose congregations or memberships are primarily comprised of African-Americans or Hispanic persons. Both the County and the defendants recognize that the pool of eligible minority persons who can serve as poll officials is quite small, as only 1.3% of the County's voting age population is African American and only 2.7% of the County's voting age population is

Hispanic, according to the 2000 census. Nevertheless, the County does agree to make a good faith effort to encourage minority group members to serve as poll officials. The County also agrees during the reporting period to maintain the number of registered voters by precinct, as it presently does, and to make those figures available to the Department of Justice upon request. The County's report shall be submitted to the Department of Justice one year from the date of entry of this Consent Order and Decree.

Accordingly, it is hereby ORDERED, ADJUDGED and DECREED:

A. The Plaintiff, Rockingham County, Virginia is entitled to a declaratory judgment in accordance with Section 4(a)(1) of the Voting Rights Act, 42 U.S.C. §1973b(a)(1);

B. The parties' Joint Motion for Entry of Consent Judgment and Decree is GRANTED, and Rockingham County, including the Rockingham County School Board and the towns of Bridgewater, Broadway, Dayton, Elkton, Grottoes, Mt. Crawford, and Timberville, shall be exempt from coverage pursuant to Section 4(b) of the Voting Rights Act, 42 U.S.C. §1973b(b), provided that Rockingham County be subject to reporting requirement as provided in paragraph 19, and provided that this Court shall retain jurisdiction over this matter for a period of ten years. This action shall be closed and placed on this Court's inactive docket, subject to being reactivated upon application by either the Attorney General or any aggrieved person in accordance with

the procedures set forth in 42 U.S.C. §1973b(a)(5).

C. The parties shall bear their own costs.

Entered this 21st day of May, 2002.

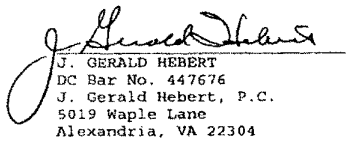
UNITED STATES CIRCUIT JUDGE

UNITED STATES DISTRICT JUDGE

Ellen S. Huvelle
UNITED STATES DISTRICT JUDGE

Approved as to form and content:

For the Plaintiff Rockingham County, Virginia



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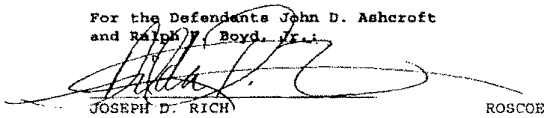

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IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF COLUMBIA

SHENANDOAH COUNTY, VIRGINIA, a political subdivision of the Commonwealth of Virginia, Plaintiff, v. JANET RENO, Attorney General of the United States of America, BILL LANN LEE, Acting Assistant Attorney General, Civil Rights Division, Defendants.	CASE NUMBER 1:99CV00992 JUDGE: Richard W. Roberts DECK TYPE: Three Judge Court DATE STAMP: 04/21/99 C.A. No. Three-Judge Court Requested

COMPLAINT

Shenandoah County, Virginia, alleges that:

1. This is an action brought for declaratory relief pursuant to Section 4 of the Voting Rights Act of 1965, as amended, 42 U.S.C. §1973b (hereinafter "Section 4"). This Court has jurisdiction over this action pursuant to 28 U.S.C. §1343(a)(4), 28 U.S.C. §2201, 42 U.S.C. §1973b, and 42 U.S.C. §1973l(b).

2. Plaintiff Shenandoah County ("the County") is a political subdivision of the Commonwealth of Virginia. Shenandoah County, Virginia, is located in the Shenandoah Valley, approximately 80 miles from Washington, DC.

3. The County's governing body is a six-member elected board of supervisors. Each of the supervisors is elected from a single-member district. A plurality win system is in effect.

4. The six supervisorial districts contain a total 15 polling locations, located conveniently to voters across the County. All polling locations are located in public buildings which are completely accessible to physiacally disabled persons.

5. The County School Board has been elected since 1995, and is elected from the same six districts as those used for the County Board of Supervisors. The change from an appointed to an elected school board was submitted in a timely manner for Section 5 preclearance to the Attorney General in 1994, who approved the change.

6. According to the 1990 census, Shenandoah County, Virginia has a total population of 31, 636, according to the 1990 census. Of this number, 359 persons (or 1.1%) are black and 292 (or 0.9%) are Hispanic. The voting age population, according to the 1990 census, is 24,630. Of this number, 272 (1.1%) are black and 189 (0.7%) are Hispanic.

7. Like other jurisdictions in the Commonwealth of Virginia, Shenandoah County does not collect or maintain voter registration data by race. Current data show, however, that a significant proportion of the County's voting age population is registered to vote. As of January 1, 1999, there were 17,930 registered voters in Shenandoah County. This number constitutes 72.8% of the County's 1990 voting age population. The number of registered voters in the County has steadily risen over the last couple of decades. In 1977, there were 11,115 registered voters in the County. By 1985, the number of registered voters had grown to 13,674.

8. The number of registered voters in Shenandoah County has grown steadily in the 1990's. Since 1990, the number of registered voters in the County has grown by 26% (from 14,235 in 1990 to 17,930 in 1999). This significant growth in the number of registrants can be explained by two phenomena: first, the post-1990 growth of the County's population; and second, the ease and expanded opportunities to register to vote.

9. Voter turnout in federal and state office elections has been consistently high in Shenandoah County. In the 1980, 1984, 1992, and 1996 Presidential elections, the following percentages of the County's registered voters turned out to vote: 86% ('80), 85% ('84), 89% ('92), and 78% ('96), respectively.

10. Elections for other federal and state legislative offices likewise have generated significant voter turnout. In the 1977 general elections, for example, 68.5% (7,615) of the registered voters turned out to vote. In the 1979 elections, 79.7% (9,690) of the registered voters cast ballots on election day. In the 1989 Governors race, approximately 68% (9364) of the registered voters turned out to vote. In the 1990 U.S. Senate race, 57.2% (8145) of the registered voters turned out to vote. In 1994, 74% (11,566) of the County's registrants voted. In 1997, 60% of the registrants voted. And in the most recent November 1998 elections, 40.6% of the registered voters cast ballots.

11. As a political subdivision of the Commonwealth of Virginia, the plaintiff Shenandoah County has been subject to certain special remedial provisions of the Voting Rights Act, including the provisions of Section 5 of the Act, 42 U.S.C. §1973c. Under Section 5 of the Act, known as the "preclearance" provisions, covered jurisdictions, including Shenandoah County, are

required to seek and obtain preclearance from either this Court or from the United States Attorney General of any change affecting voting, and such preclearance must be obtained prior to implementation.

12. Since its inception in 1965, the Voting Rights Act has allowed the states and political subdivisions, which are subject to these special provisions of the Act, to exempt themselves from coverage under the Act's special remedial provisions (a process known as "bailout"), if they can satisfy standards established in

the Voting Rights Act.

13. In 1982, Congress changed in the exemption or bailout standards of the Act. As amended in 1982, Section 4 of the Voting Rights Act (42 U.S.C. §1973b) provides that states and political subdivisions covered under the special provisions of the Act are entitled to a declaratory judgment in this Court granting an exemption from the Act's special remedial provisions if, *during the ten years preceding the filing of the action:*

A) no test or device has been used either for the purpose or with the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group, within the State or political subdivision seeking a declaratory judgment;

B) no final judgment has been entered by any court determining that the political subdivision has denied or abridged the right to vote on account of race, color, or membership in a language minority group;

C) no Federal examiners have been assigned to the political subdivision;

D) all governmental units within the political subdivision have complied with the preclearance provisions of Section 5 of the Voting Rights Act, 42 U.S.C. §1973c; and

E) the Attorney General has not interposed any objection to any proposed voting change within the political subdivision and no declaratory judgment has been denied with regard to such a change by this Court under Section 5.

14. As amended in 1982, Section 4 of the Act also requires states and political subdivisions seeking an exemption from the Act's special provisions to show that, *during the pendency of the declaratory judgment action seeking such exemption*:

A) any voting procedure or method of election within the state or political subdivision exists which inhibits or dilutes equal access to the electoral process has been eliminated;

B) constructive efforts have been made by the political subdivision to eliminate any intimidation or harassment of persons exercising rights under the Voting Rights Act; and

C) expanded opportunities for convenient registration and voting exists within the state or political subdivision.

15. For a period that extends at least more than the last ten years, Shenandoah County has made a timely submission of all changes affecting voting for preclearance review under Section 5 of the Voting Rights Act. 42 U.S.C. §1973c. Over the years, Shenandoah County has made numerous submissions to the Department of Justice seeking preclearance of voting changes under Section 5 of the Voting Rights Act. Since 1983, for example, over 127 voting changes have been submitted for Section 5 preclearance. Thus, Shenandoah County has substantially complied with the *procedural* requirements of Section 5.

16. No objection has ever been interposed by the Attorney General to any change affecting voting in Shenandoah County. Thus, Shenandoah County has also complied with the *substantive* nondiscrimination requirements of Section 5 inasmuch as all voting changes have been approved by the Attorney General. Moreover, many of the voting changes made over the years in Shenandoah County often expanded the opportunities for County residents to become registered voters and to cast ballots.

17. Voter registration opportunities in the County are readily and equally available to all citizens. The voter registration office for the County is located in Woodstock, the County seat and a central location within the County. The voter registration office is open from 9 am to 5 pm Monday through Friday (closed for lunch). Voters may also register by mail, and voter registration applications also are available at towns throughout the County in the following five locales: New Market, Mount Jackson, Bryce, Strasburg, and Fort Valley.

18. Voter registration is also available under the National Voter Registration Act (NVRA) at DMV offices and public assistance agencies in Shenandoah County. While in past years most voters in the County became registered at the County Board of Registrars or at one of the voter registration sites located throughout the County, the implementation of the NVRA has changed the origin of the great majority of registration applications. Today, nearly 90% of all persons in the County who become voters register through the NVRA at DMV and social service agencies.

19. The County's three-member Electoral Board appoints persons each February to work as poll officials. The appointment of poll officials is for a one-year term. Recommendations of persons to be appointed originate with the chairs of the local Democratic and Republican parties. Not a single person recommended by a political party chair has ever been rejected by the Electoral Board.

20. The County has found it difficult over the years to find a sufficient number of persons willing to serve as poll officials. In recent years, the voter registration applications (including the one used at DMV and public assistance agencies) have included a special section soliciting persons to serve as poll officials. Since this new voter registration application has been

in use, each and every time a voter has indicated an interest in serving as a poll official, the Registrar has sent that person a packet of information.

21. Minority voters have served as poll workers in Shenandoah County. Not a single minority voter who has expressed an interest in becoming a poll official has been discouraged from doing so.

22. Although no minority candidates have ever sought election to the County Board of Supervisors, black candidates have run for local town elective offices within Shenandoah County and have enjoyed success in doing so. Black candidates have been elected at-large to town offices in Strasburg and Toms Brook in Shenandoah County.

23. No person in the Shenandoah County has been denied the right to vote on account of race, color, or membership in language group since at least the time the Voting Rights Act was enacted in 1965.

24. No "test or device" as defined in the Voting Rights Act, 42 U.S.C. 1973b(c), has been used in Shenandoah County for at least the preceding ten years.

25. Shenandoah County has not been the subject of any lawsuit in which it was alleged that a person (or persons) was being denied the right to vote on account of race, color, or membership in a language minority group.

26. No voting practices or procedures have been abandoned by the County or challenged on the grounds that such practices or procedures would have either the purpose or the effect of denying the right to vote on account of race, color, or membership in a language minority group.

27. Shenandoah County does not employ any voting procedures or methods of election that inhibit or dilute equal access to the electoral process in the County.

28. No Federal examiners have ever been appointed or assigned to Shenandoah County under Section 3 of the Voting Rights Act, 42 U.S.C. 1973a.

29. There are no known incidents in Shenandoah County where persons exercising their right to vote at the polls have been intimidated or harassed.

30. As demonstrated in paragraphs 2 through 10, and 15 through 29, above, Shenandoah County is entitled to a declaratory judgment under Section 4 of the Voting Rights Act, exempting the County from the special remedial provisions of the Voting Rights Act.

31. Pursuant to 42 U.S.C. §1973b, Shenandoah County has "publicize[d] the intended commencement and any proposed settlement of [this] action in the media serving [the County] and in the appropriate United States post offices." A description of these publications and postings is set forth in Exhibit A hereto.

WHEREFORE, plaintiff Shenandoah County respectfully prays that this Court:

A. Convene a three-judge court, pursuant to 28 U.S.C. §2284 and 42 U.S.C. §1973b, to hear and determine the claims raised in plaintiff's complaint;

B. Enter a declaratory judgment that Shenandoah County is entitled to an exemption or bailout from the special remedial provisions of the Voting Rights Act; and

C. Grant such other relief as may be necessary and proper as the needs of justice may require, including costs in accordance with 42 U.S.C. §1973 l (e).

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EXHIBIT A

Shenandoah County published legal Notices that it intended to commence this bailout action in the *Northern Virginia Daily* newspaper on February 4, 11, and 18, 1999; and in the *Harrisonburg Daily News Record* on February 4, 11, and 18, 1999.

NOTICES that Shenandoah County would be seeking this bailout judgment have been continuously posted since February 17-18, 1999, at the following public locations throughout Shenandoah County: the Shenandoah County Registrar's office; the Shenandoah County courthouse, and at all six town offices in Shenandoah County.

In addition, NOTICES that Shenandoah County would be seeking this bailout judgment have been posted continuously since February 17-18, 1999, at the following United States Postal Service Offices located throughout Shenandoah County: Orkney Springs, New Market, Basye, Mt. Jackson, Edinburg, Woodstock, Fort Valley, Toms Brook, Quicksburg, and Strasburg.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

SHENANDOAH COUNTY, VIRGINIA, Plaintiff,	)	
v.	)	C.A. No. 1:99CV00992
JANET RENO, Attorney General of the United States of America BILL LANN LEE, Acting Assistant Attorney General, Civil Rights Division, Defendants.	)	(KLH, PLF, NHJ) (three-judge court)

CONSENT JUDGMENT AND DECREE

This action was initiated by Shenandoah County, a political subdivision of the Commonwealth of Virginia (hereafter "the County"). The County is subject to the provisions of Section 5 of the Voting Rights Act of 1965 as amended. 42 U.S.C. §1973c. The County seeks a declaratory judgment under Section 4 of the Voting Rights Act of 1965, as amended, 42 U.S.C. §1973b. A three-judge court has been convened as provided in 42 U.S.C. §1973b(a)(5) and 28 U.S.C. §2284.

Section 4(A) of the Voting Rights Act provides that a State or political subdivision subject to the special provisions of the Act may be exempted from those provisions if it can demonstrate in an action for a declaratory judgment before the United States District Court for the District of Columbia that it has both 1) complied with the Voting Rights Act during the ten-year period prior to filing the action; and 2) taken positive steps both to encourage minority political participation and to remove

structural barriers to minority electoral influence.

In order to demonstrate compliance with the Voting Rights Act during the ten-year period prior to commencement of a declaratory judgment action under Section 4(a), a political subdivision in Virginia must satisfy five conditions: 1) no test or device may have been used within the political subdivision during that ten-year period for the purpose or with the effect of denying or abridging the right to vote on account of race or color; 2) no court of the United States may have issued a final judgment during that ten-year period that the right to vote has been denied or abridged on account of race or color within the territory of the political subdivision; no consent decree, settlement or agreement may have been entered into during that ten-year period that resulted in the abandonment of a voting practice challenged on such grounds; and no such claims may be pending at the time the declaratory judgment action is commenced; 3) no Federal examiners may have been assigned to the political subdivision during the ten-year period preceding commencement of the declaratory judgment action; 4) the political subdivision and all governments units within its territory must have complied with Section 5 of the Voting Rights Act, 42 U.S.C.§1973c, during that ten-year period, including the requirement that voting changes covered under Section 5 were not enforced without Section 5 preclearance, and that all voting changes denied Section 5 preclearance by the Attorney General or the District Court for the District of Columbia have been repealed; and 5) neither the

Attorney General nor the District Court for the District of Columbia may have denied Section 5 preclearance to a submission by the political subdivision or any governmental unit within its territory during that ten-year period, nor may any Section 5 submissions or declaratory judgment actions be pending. 42 U.S.C. §1973b(a)(1)(A-E).

Also, to obtain the declaratory judgment, a political subdivision and all governmental units within its territory must have eliminated voting procedures and methods of election that inhibit or dilute equal access to the electoral process. 42 U.S.C. §1973b(a)(1)(F)(i). In addition, the political subdivision must have engaged in constructive efforts to eliminate intimidation or harassment of persons exercising voting rights, and to expand the opportunity for convenient registration and voting for every person of voting age, and the appointment of minority persons as election officials throughout the jurisdiction and at all stages of the election and registration process. 42 U.S.C. §1973b(a)(1)(F)(ii-iii).

The political subdivision is required to present evidence of minority participation, including the levels of minority group registration and voting, changes in such levels over time, and disparities between minority group and non-minority group participation. 42 U.S.C. §1973b(a)(2). The political subdivision may not in the preceding ten years have engaged in violations of any provision of the Constitution or laws of the United States or any State or political subdivision with respect

to discrimination in voting on account of race or color. 42 U.S.C. §1973b(a)(3). Finally, the political subdivision must provide public notice of its intent to seek a Section 4(a) declaratory judgment. 42 U.S.C. §1973b(a)(4).

The defendant United States has conferred with Plaintiff Shenandoah County and, upon investigation, has agreed that the Plaintiff is entitled to the requested declaratory judgment, subject to annual reporting requirements for a period of five years to which the parties have agreed as a basis for resolving this action. 42 U.S.C. §1973b(a)(9). The parties have filed a joint motion, accompanied by a Stipulation of Facts, for entry of this Consent Judgment and Decree.

FINDINGS

Pursuant to the parties Stipulations and joint motion, this Court finds as follows:

1. Shenandoah County is a political subdivision of the Commonwealth of Virginia, and a political subdivision of a state within the meaning of Section 4(a) of the Voting Rights Act, 42 U.S.C. §1973b(a)(1). See Stipulation of Facts, ¶ 1.

2. There are nine separate governmental units within Shenandoah County, including: the towns of Edinburg, Mount Jackson, New Market, Strasburg, Toms Brook, and Woodstock; two special districts including: the Stoney Creek Sanitary District, and the Toms Brook-Maurertown Sanitary District; and the Shenandoah County School Board. See Stipulation of Facts, ¶ 2.

3. No discriminatory test or device has been used by the

County during the ten years prior to the commencement of this action for the purpose or with the effect of denying or abridging the right to vote on account of race or color. See Stipulation of Facts, ¶ 33.

4. No court of the United States has issued a final judgment during the last ten years prior to the commencement of this action that the right to vote has been denied or abridged on account of race or color in Shenandoah County, and no consent decree, settlement, or agreement has been entered into resulting in any abandonment of a voting practice challenged on such grounds during that time. No such claims presently are pending or were pending at the time this action was filed. See Stipulation of Facts, ¶¶ 34, 35.

5. No Federal Examiners have been to Shenandoah County. See Stipulation of Facts, ¶ 38.

6. Shenandoah County and the governmental units within the County have obtained Section 5 preclearance for all voting changes enforced within Shenandoah County during the ten-year period preceding this action. However, preclearance was not obtained in a timely manner, i.e. before the changes were enforced, with respect to a special election conducted by the county and various annexations by four of the towns. See Stipulation of Facts, ¶¶ 23, 41.

7. All voting changes submitted by the County under Section 5 have been precleared by the Attorney General. No Section 5 submissions by Shenandoah County presently are pending before the

Attorney General. Shenandoah County has never sought Section 5 judicial preclearance from this court. See Stipulation of Facts, ¶ 24.

8. The County is not employing voting procedures or methods of election which inhibit or dilute equal access to the electoral process by its minority citizens. See Stipulation of Facts, ¶ 37.

9. There is no indication that any persons in the County have been subject to intimidation or harassment in the course of exercising their right to participate in the political process. See Stipulation of Facts, ¶ 39.

10. The County has engaged in constructive efforts, such as expanded opportunity for convenient registration and voting for every person of voting age, and the appointment of minority persons as election officials throughout the jurisdiction and at all stages of the election and registration process. See Stipulation of Facts, ¶¶ 25-27, 30-31.

11. Because Shenandoah County does not record the race of its registered voters, it is unable to present evidence directly measuring minority voter participation, but the County has provided evidence of voter participation to the extent possible. See Stipulation of Facts, ¶ 13.

12. The County has not within the ten years prior to the commencement of this action engaged in violations of the Constitution or laws of the United States or any State or political subdivision with respect to discrimination in voting on

account of race or color. See Stipulation of Facts, ¶ 36.

13. Shenandoah County has publicized the intended commencement and proposed settlement of this action in the media and in appropriate United States post offices as required under 42 U.S.C. §1973b(a)(4). See Stipulation of Facts, ¶ 40. No aggrieved party has sought to intervene in this action pursuant to 42 U.S.C. §1973b(a)(4).

14. As a basis for resolving this action, the parties have agreed that Shenandoah County will be subject to annual reporting requirements for a period of five years. The County will submit to the United States, an annual Report documenting all voting changes adopted by the County as well as the nine governmental units within the County during each calendar year. The first Report will be due December 15, 2000, and subsequent Reports will be due each December 15, thereafter.

Accordingly, it is hereby ORDERED, ADJUDGED and DECREED:

A. The plaintiff Shenandoah County, Virginia, is entitled to a declaratory judgment in accordance with Section 4(a)(1) of the Voting Rights Act, 42 U.S.C. §1973b(a)(1);

B. The parties' Joint Motion for Entry of Consent Judgment and Decree is GRANTED, and Shenandoah County, including the towns of Edinburg, Mount Jackson, New Market, Strasburg, Toms Brook, and Woodstock; the two special districts including the Stoney Creek Sanitary District and Toms Brook-Maurertown Sanitary District, and the Shenandoah County School Board shall be exempt from coverage pursuant to Section 4(b) of the Voting Rights Act, 42 U.S.C. §1973b(b), provided that Shenadoah County be subject to annual reporting requirements as provided in paragraph 14, and provided that this Court shall retain jurisdiction over this matter for a period of ten years. This action shall be closed and placed on this Court's inactive docket, subject to being reactivated upon application by either the Attorney General or any aggrieved person in accordance with the procedures set forth in 42 U.S.C. §1973b(a)(5).

C. The parties shall bear their own costs.

Entered this 15th day of October, 1999.

Karen LeCraft Henderson
UNITED STATES CIRCUIT JUDGE

Norma Holloway Johnson
UNITED STATES DISTRICT JUDGE

Paul L. Friedman
UNITED STATES DISTRICT JUDGE

Approved as to form and content:

For the Plaintiff Shenandoah County, Virginia

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IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF COLUMBIA

WARREN COUNTY, VIRGINIA, a political subdivision of the Commonwealth of Virginia, 220 North Commerce Avenue Front Royal, Virginia 22630, Plaintiff, v. JOHN ASHCROFT, Attorney General of the United States of America, RALPH F. BOYD, JR., Assistant Attorney General, Civil Rights Division, United States Department of Justice, Washington, DC, Defendants.	)	Civil Action No. Three-Judge Court Requested

COMPLAINT

Warren County alleges that:

1. This is an action brought for declaratory relief pursuant to Section 4 of the Voting Rights Act of 1965, as amended, 42 U.S.C. §1973b (hereinafter "Section 4"). This Court has jurisdiction over this action pursuant to 28 U.S.C. §1343(a)(4), 28 U.S.C. §2201, 42 U.S.C. §1973b, and 42 U.S.C. §1973l(b).

2. Plaintiff Warren County ("the County") is a political subdivision of the Commonwealth of Virginia. Warren County, Virginia, is located in the Shenandoah Valley, approximately 50 miles from Washington, DC.

3. Located within Warren County is the Town of Front Royal, Virginia. County residents of Warren County who reside within Front Royal are eligible to vote in town elections, and Front Royal residents are eligible to vote in Warren County elections.

4. The Warren County Board of Supervisors is the governing body that formulates policies for the administration of government in Warren County. It is comprised of five members elected from single-member districts to serve four-year terms. Terms of office are staggered such that two supervisors are up for election in one year and then three supervisors are up for election two years later. The County Board of Supervisors appoints a County Administrator to serve as the County's chief administrative officer.

5. The five Board of Supervisors districts contain a total of 12 polling locations, located conveniently to voters across the County.

6. There are two governmental units operating within Warren County. One of these is the town government in Front Royal, the county seat. Front Royal is governed by a seven-member town council, a mayor and six council members. Elections are conducted at-large, and a plurality win system is in effect. Elections are held every two years and terms of office for town council members are staggered such that three members are elected every two years. The other governmental unit operating within Warren County is the Warren County School Board ("School Board"). Since 1995, the School Board has been an elected body, with members elected from the same districts as the County Board of Supervisors. Terms of office for the School Board are staggered in the same manner as the positions for the Board of Supervisors.

7. According to the 2000 census, Warren County, Virginia has a total population of 31,584. Of this number, 1526 persons (or 4.8%) are black and 494 (or 1.6%) are Hispanic. The voting age population of the County, according to the 2000 census, is 23,501. Of this number, 1092 (4.6%) are black and 343 (1.5%) are Hispanic. The Town of Front Royal, according to the 2000 census, has a total population of 13,589. Of this number 1,180 (8.7%) are black and 290 (2.1%) are Hispanic. The voting age population of Front Royal is 10,102. Of this number, 843 (8.3%) are black and 191 (1.9%) are Hispanic.

8. Like other jurisdictions in the Commonwealth of Virginia, Warren County does not collect or maintain voter registration data by race. As of today, there are 18,250 registered voters in Warren County.

9. The number of registered voters in the County has risen over the last couple of decades. In 1979, for example, there were only 7834 registered voters in the County. By 1983, the number of registered voters had grown to 8335. By 1990, the number had risen to 9368. The number of registered voters in the County has grown even more dramatically over the last decade. From 1990 to 1999, the number of registered voters in the County grew by 71%, from 9368 in 1990 to 16,012 in 1999.

10. Voter turnout in elections varies according to the offices up for election. In the three Presidential elections of 1988, 1992 and 1996, 80%, 87%, and 75% of the County's registered voters turnout to vote, respectively. In the November 2000 Presidential election, 11,398 persons turned out to vote, which was 66% of the County's registered voters at that time. In the General

Election for Governor held in November 2001, 8,025 persons, or 45.5% of the County's registered voters, turned out to vote. Voter turnout for the Warren County Board of Supervisors elections in the last two cycles has been 43.9%, and 45.5%, respectively.

11. As a political subdivision of the Commonwealth of Virginia, plaintiff Warren County has been subject to certain special remedial provisions of the Voting Rights Act, including the provisions of Section 5 of the Act, 42 U.S.C. §1973c. Under Section 5 of the Act, known as the "preclearance" provisions, covered jurisdictions, including Warren County, are required to seek and obtain preclearance from either this Court or from the United States Attorney General of any change affecting voting, and such preclearance must be obtained prior to implementation.

12. Since its inception in 1965, the Voting Rights Act has allowed the States and political subdivisions, which are subject to these special provisions of the Act, to exempt themselves from coverage under the Act's special remedial provisions, if they can satisfy standards established in the Voting Rights Act.

13. In 1982, Congress made changes in the exemption standards of the Act. As amended in 1982, Section 4 of the Voting Rights Act provides that States and political subdivisions covered under the special provisions of the Act are entitled to a declaratory judgment in this Court granting an exemption from the Act's special remedial provisions if, during the ten years preceding the filing of the action:

> A) no test or device has been used either for the purpose or with the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group, within the State or political subdivision seeking a declaratory judgment;

B) no final judgment has been entered by any court determining that the political subdivision has denied or abridged the right to vote on account of race, color, or membership in a language minority group;
C) no Federal examiners have been assigned to the political subdivision;
D) the appropriate actions with respect to the political subdivision under the Voting Rights Act pursuant to 42 U.S.C. 1973c; and
E) the Attorney General has not interposed any objection to any proposed voting change within the political subdivision and no declaratory judgment has been denied with regard to such a change by this Court under Section 5.

14. As amended in 1982, Section 4 of the Act also requires States and political subdivisions seeking an exemption from the Act's special provisions to show that, during the pendency of the declaratory judgment action seeking such exemption:

A) Any voting procedure or method of election within the state or political subdivision exists which inhibits or dilutes equal access to the electoral process has been eliminated;
B) Constructive efforts have been made by the political subdivision to eliminate any intimidation or harassment of persons exercising rights under the Voting Rights Act; and
C) Expanded opportunities for convenient registration and voting exists within the State or political subdivision.

15. As described in each of the paragraphs set forth below, Warren County has fully complied with the provisions of Section 4 of the Act as set forth in paragraphs 13 and 14, *supra*.

16. Over the years, Warren County has made numerous submissions to the Department of Justice seeking preclearance of voting changes under Section 5 of the Voting Rights Act. Since 1983, for example, the County has made a timely submission of over 125 voting changes to the Department of Justice for Section 5 preclearance. The defendant Attorney General has approved each and every voting change that has been submitted by the County for preclearance under the

Voting Rights Act. Since passage of the Voting Rights Act in 1965, not a single objection has been interposed by the Department of Justice to any voting change in Warren County. In approving each and every change, the defendants have concluded that the voting changes submitted were free of a racially discriminatory purpose or a racially discriminatory effect. Many of the voting changes made over the years in Warren County and submitted for Section 5 preclearance actually expanded the opportunities for County residents to become registered voters and to cast ballots.

17. Voter registration opportunities in the County are readily and equally available to all citizens. The voter registration office for the County is located in downtown Front Royal, a central and convenient location for County residents. The voter registration office is office is open from 9 a.m. to 12:30 p.m., and from 1:30 pm to 5 p.m., Monday through Friday.

18. Voters in Warren County may also register by mail, and voter registration applications are available at locations throughout the County.

19. The opportunity to become a registered voter in Warren County is also available under the National Voter Registration Act (the "NVRA") at DMV offices and public assistance agencies in Warren County. While in past years most voters became registered at the County's voter registration office, the implementation of the NVRA in Virginia over the last decade has changed the origin of the great majority of registration applications. Today, many of the County's new registrants register through the DMV and by mail, and the opportunities for persons to register to vote has been made more convenient and available as a result of

implementation of the NVRA.

20. Warren County also has a three-member Electoral Board, appointed pursuant to Virginia state law, and the Electoral Board nominates a roster of persons each February to work as poll workers for a one-year term. Recommendations of persons to be appointed as poll workers originate with the chairs of the local Democratic and Republican parties. Not a single person recommended by a political party chair to serve as a poll official has ever been rejected by the Electoral Board.

21. Because the County has found it difficult over the years to find enough persons willing to serve as poll officials, the Warren County General Registrar has actively recruited persons to work at the polls and has even distributed brochures seeking qualified persons to serve as poll officials. In recent years, the State's voter registration applications (including the one used at DMV and public assistance agencies in Warren County) have included a special section soliciting persons to serve as poll officials. These applications are publicly available at the Registrar's office, County offices, and the Commissioner of Revenue and Treasurer's offices. Not a single eligible Warren County resident who has expressed an interest in becoming an election official has ever been denied the opportunity to do so. Although the number and percentage of minority persons in Warren County is quite small, minority citizens have served as poll officials. Today, for example, there are 65 persons who work the polls. On average, there have been between 55 and 65 poll workers in Warren County in recent years. From 1993 to the present, the number of black residents serving as poll officials has met or exceeded the black

voting age population of the County.

22. Although the number and percentage of minority citizens in Warren County is quite small, minority citizens have nonetheless played an active role in the political process within the County. For example, the Warren County Board of Supervisors has had one black member (Mr. Robert Kellam) since 1995, and Mr. Kellam was selected to serve as Chairperson of the Board of Supervisors in 1999. Mr. Kellam was the first black candidate to seek elective office in Warren County, having been elected in 1995 and re-elected in 1999. In addition, black candidates for elective office have also been successful at the town level. In Front Royal, for example, a black candidate (Mr. George Banks) ran for mayor in 1996 and was elected. In 1998, Mr. Banks was re-elected without opposition.

23. No person in Warren County has been denied the right to vote on account of race, color, or membership in language group since at least the time that the Voting Rights Act was enacted in 1965.

24. No "test or device" as defined in the Voting Rights Act (42 U.S.C. §1973b(c)) has been used in Warren County as a prerequisite to either registering or voting for at least the preceding ten years.

25. Warren County has never been the subject of any lawsuit in which it was alleged that a person (or persons) was being denied the right to vote on account of race, color, or membership in a language minority group.

26. No voting practices or procedures have been abandoned by the County or challenged on the grounds that such practices or procedures would have either the purpose or the effect of denying the right to vote on account of race, color, or membership in a language minority group.

27. Warren County has not employed any voting procedures or methods of election that inhibit or dilute equal access to the electoral process by minority voters in the County. Minority voters in Warren County are not being denied an equal opportunity to elect candidates of their choice to the County Board of Supervisors, to the County School Board, or the Front Royal town council.

28. Federal examiners have never been appointed or assigned to Warren County under Section 3 of the Voting Rights Act, 42 U.S.C. §1973a.

29. There are no known incidents in Warren County where any person exercising his or her right to vote has been intimidated or harassed at the polls (or while attempting to register to vote).

30. The allegations set forth in paragraphs 16 through 29, above, if established, entitle Warren County to a declaratory judgment under Section 4 of the Voting Rights Act, 42 U.S.C. §1973b, exempting the County and all the governmental units within the County from the special remedial provisions of the Voting Rights Act.

31. Pursuant to 42 U.S. C. §1973b, Warren County has "publicize[d] the intended commencement ...of [this] action in the media serving [the County] and in the appropriate United States post offices." The County published a legal Notice that it intended to commence

this bailout action in the Northern Virginia Daily, a daily newspaper of general circulation in and around Warren County, in June 2000. In addition, the County posted copies of the Notice in post offices in Warren County and at eight other public locations, including the County Courthouse

and Office of Voter Registration. The County also held a public hearing on the proposed bailout in June 2000, and no one appeared at the hearing in opposition. The County also intends to publish a Notice that it has commenced this action and that it intends to file a proposed settlement of this action, if Defendants consent to entry of the requested declaratory judgment action sought herein.

WHEREFORE, plaintiff Warren County respectfully prays that this Court:

A. Convene a three-judge court, pursuant to 28 U.S.C.§2284 and 42 U.S.C. §1973b, to hear the claims raised in plaintiff's complaint;

B. Enter a declaratory judgment that Warren County is entitled to a bailout from the special remedial provisions of the Voting Rights Act; and

C. Grant such other relief as may be necessary and proper as the needs of justice may require.

For Plaintiff Warren County:

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

WARREN COUNTY, VIRGINIA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	C.A. No. 1:02CV01736
	)	(HTE, EGS, RMU)
JOHN ASHCROFT, Attorney General of the United States of America, RALPH F. BOYD JR., Assistant Attorney General, Civil Rights Division,	)	(three-judge court)
	)	
Defendants.	)	

CONSENT JUDGMENT AND DECREE

This action was initiated by Warren County, a political subdivision of the Commonwealth of Virginia (hereafter "the County"). The County is subject to the provisions of Section 5 of the Voting Rights Act of 1965 as amended. 42 U.S.C. §1973c. The County seeks a declaratory judgment under Section 4 of the Voting Rights Act of 1965, as amended, 42 U.S.C. §1973b. A three-judge court has been convened as provided in 42 U.S.C. §1973b(a)(5) and 28 U.S.C. §2284.

Section 4(A) of the Voting Rights Act provides that a state or political subdivision subject to the special provisions of the Act may be exempted from those provisions if it can demonstrate in an action for a declaratory judgment before the United States

District Court for the District of Columbia that it has both 1) complied with the Voting Rights Act during the ten-year period prior to filing the action, and 2) taken positive steps both to encourage minority political participation and to remove structural barriers to minority electoral influence.

In order to demonstrate compliance with the Voting Rights Act during the ten-year period prior to commencement of a declaratory judgment action under Section 4(a), the County must satisfy five conditions: 1) the County has not used any test or device during that ten-year period for the purpose or with the effect of denying or abridging the right to vote on account of race or color; 2) no court of the United States has issued a final judgment during that ten-year period that the right to vote has been denied or abridged on account of race or color within the territory of the County, and no consent decree, settlement or agreement may have been entered into during that ten-year period that resulted in the abandonment of a voting practice challenged on such grounds; and no such claims may be pending at the time the declaratory judgment action is commenced; 3) no Federal examiners have been assigned to the County pursuant to the Voting Rights Act during the ten-year period preceding commencement of the declaratory judgment action; 4) the County and all governmental units within its territory must have complied with

Section 5 of the Voting Rights Act, 42 U.S.C.§1973c, during that ten-year period, including the requirement that voting changes covered under Section 5 not be enforced without Section 5 preclearance, and that all voting changes denied Section 5 preclearance by the Attorney General or the District Court for the District of Columbia have been repealed; and 5) neither the Attorney General nor the District Court for the District of Columbia have denied Section 5 preclearance to a submission by the County or any governmental unit within its territory during that ten-year period, nor may any Section 5 submissions or declaratory judgment actions be pending. 42 U.S.C. §1973b(a)(1)(A-E).

In addition, to obtain the declaratory judgment, the County and all governmental units within its territory must have eliminated voting procedures and methods of election that inhibit or dilute equal access to the electoral process. 42 U.S.C. §1973b(a)(1)(F)(i). In addition, the County must have engaged in constructive efforts to eliminate intimidation or harassment of persons exercising voting rights, and to expand the opportunity for convenient registration and voting for every person of voting age, and the appointment of minority persons as election officials throughout the jurisdiction and at all stages of the election and registration process. 42 U.S.C. §1973b(a)(1)(F)(ii-

iii).

The County is required to present evidence of minority participation in the electoral process, including the levels of minority group registration and voting, changes in such levels over time, and disparities between minority group and non-minority group participation. 42 U.S.C. §1973b(a)(2). In the ten years preceding bailout, the County must not have engaged in violations of any provision of the Constitution or laws of the United States or any State or political subdivision with respect to discrimination in voting on account of race or color. 42 U.S.C. §1973b(a)(3). Finally, the County must provide public notice of its intent to seek a Section 4(a) declaratory judgment. 42 U.S.C. §1973b(a)(4).

The defendant United States has conferred with Plaintiff Warren County and, after investigation, has agreed that the Plaintiff is entitled to the requested declaratory judgment, subject to annual reporting requirements for a period of three years to which the parties have agreed as a basis for resolving this action. 42 U.S.C. §1973b(a)(9). The parties have filed a joint motion, accompanied by a Stipulation of Facts, for entry of this Consent Judgment and Decree.

FINDINGS

Pursuant to the parties' stipulations and joint motion, this Court finds as follows:

1. Warren County is a political subdivision of the Commonwealth of Virginia, and a political subdivision of a state within the meaning of Section 4(a) of the Voting Rights Act, 42 U.S.C. §1973b(a)(1). See: Stipulation of Facts, ¶ 1.

2. There are two separate governmental units within Warren County, the Town of Front Royal and the Warren County School Board. See: Stipulation of Facts, ¶ 2.

3. Warren County is a covered jurisdiction subject to the special provisions of the Voting Rights Act, including Section 5 of the Act, 42 U.S.C. § 1973c. See: Stipulation of Facts, ¶ 3.

4. Warren County was designated as a jurisdiction subject to the special provisions of the Voting Rights Act on the basis of the determinations made by the Attorney General that Virginia maintained a "test or device" as defined by section 4(b) of the Act, 42 U.S.C. § 1973b(b), on November 1, 1964, and by the Director of the Census that fewer than 50 percent of the persons of voting age residing in the state voted in the 1964 presidential election. See: Stipulation of Facts, ¶ 4.

5. No discriminatory test or device has been used by the County during the ten years prior to the commencement of this

action for the purpose or with the effect of denying or abridging the right to vote on account of race or color. See: Stipulation of Facts, ¶ 24.

6. No person in Warren County has been denied the right to vote on account of race or color during the past ten years. See: Stipulation of Facts, ¶ 23.

7. No court of the United States has issued a final judgment during the last ten years prior to the commencement of this action that the right to vote has been denied or abridged on account of race or color in Warren County, and no consent decree, settlement, or agreement has been entered into resulting in any abandonment of a voting practice challenged on such grounds during that time. No such claims presently are pending or were pending at the time this action was filed. See: Stipulation of Facts, ¶ 26.

8. No Federal examiners have been assigned to Warren County within the ten-year period preceding this action. See: Stipulation of Facts, ¶ 28.

9. Warren County and the governmental units within the County have obtained Section 5 preclearance for all voting changes enforced within Warren County during the ten-year period preceding this action. However, preclearance was not obtained in a timely manner, before the changes were enforced, for seven

voting changes effected by the County, including a special election, several boundary changes and annexations involving Warren County, and altering the method of selecting County school board members. See: Stipulation of Facts, ¶¶ 13-15 .

10. All voting changes submitted by the County under Section 5 have been precleared by the Attorney General. No Section 5 submissions by Warren County presently are pending before the Attorney General. Warren County has never sought Section 5 judicial preclearance from this court. See: Stipulation of Facts, ¶ 15.

11. No voting practices or procedures have been abandoned by the County or challenged on the grounds that such practices or procedures would have either the purpose or the effect of denying the right to vote on account of race or color. See: Stipulation of Facts, ¶ 26.

12. The County is not employing voting procedures or methods of election which inhibit or dilute equal access to the electoral process by its minority citizens. See: Stipulation of Facts, ¶ 27.

13. There is no indication that any persons in the County have been subject to intimidation or harassment in the course of exercising their right to participate in the political process. See: Stipulation of Facts, ¶ 29.

14. Because there is no evidence that any incidents of voter intimidation or harassment of voters have occurred in Warren County in the last ten years, neither the County nor any of its governmental units have had any occasion to engage in constructive efforts to eliminate intimidation and harassment of persons exercising rights protected under the Voting Rights Act. See: Stipulation of Facts, ¶ 29.

15. The County has engaged in other constructive efforts, such as expanded opportunity for convenient registration and voting for every person of voting age, and the appointment of minority persons as poll workers for election day. See: Stipulation of Facts, ¶¶ 20-22.

16. Since Warren County does not record the race of its registered voters, it is unable to present evidence directly measuring minority voter participation, but the County has provided evidence of voter participation to the extent possible. See: Stipulation of Facts, ¶¶ 6, 16, 17, 20, and 22.

17. The County has not engaged, within the ten years prior to the commencement of this action, in violations of the Constitution or laws of the United States or any State or political subdivision with respect to discrimination in voting on account of race or color. See: Stipulation of Facts, ¶ 24.

18. Warren County has publicized the intended commencement and proposed settlement of this action in the media and in appropriate United States post offices as required under 42 U.S.C. §1973b(a)(4). No aggrieved party has sought to intervene in this action pursuant to 42 U.S.C. §1973b(a)(4). See: Stipulation of Facts, ¶¶ 30-31.

19. As a basis for resolving this action, the parties have agreed that Warren County will be subject to annual reporting requirements for a period of three years. The County will submit to the United States an annual report documenting all voting changes adopted by the County as well as the two governmental units within the County during each calendar year. The first report will be due December 31, 2003, and subsequent reports will be due each December 31st, thereafter, with the final report due December 31, 2005.

Accordingly, it is hereby ORDERED, ADJUDGED and DECREED:

1. The plaintiff Warren County, Virginia, is entitled to a declaratory judgment in accordance with Section 4(a)(1) of the Voting Rights Act, 42 U.S.C. §1973b(a)(1);

2. The parties' Joint Motion for Entry of Consent Judgment and Decree is GRANTED, and Warren County, including the Town of Front Royal and the

Warren County School Board, shall be exempt from coverage pursuant to Section 4(b) of the Voting Rights Act, 42 U.S.C. §1973b(b), provided that Warren County be subject to annual reporting requirements as provided herein, and provided that this Court shall retain jurisdiction over this matter for a period of ten years. This action shall be closed and placed on this Court's inactive docket, subject to being reactivated upon application by either the Attorney General or any aggrieved person in accordance with the procedures set forth in 42 U.S.C. §1973b(a)(5).

3. The parties shall bear their own costs.

Entered this 21st day of November, 2002.

Signed: **Emmet G. Sullivan**
United States District Judge
November 25, 2002

On behalf of

Emmet G. Sullivan
United States District Judge

Harry T. Edwards
Circuit Judge
United States Court of Appeals for the D.C. Circuit

Ricardo M. Urbina
United States District Judge

members of the three-judge District Court appointed, pursuant to 28 U.S.C. § 2284, to hear and determine this case by

Chief Judge Douglas Ginsburg, United States Court of Appeals for the D.C. Circuit by Order dated September 10, 2002.

Approved as to form and content:

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IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF COLUMBIA

CITY OF WINCHESTER, VIRGINIA,
a political subdivision of the
Commonwealth of Virginia,
15 N. Cameron Street
Winchester, Virginia 24604

Plaintiff,

v.

JANET RENO, Attorney General of
the United States of America,
BILL LANN LEE,
Acting Assistant Attorney General,
Civil Rights Division,

Defendants.

CASE NUMBER 1:00CV03073
JUDGE: Ellen Segal Huvelle
DECK TYPE: Three Judge Court
DATE STAMP: 12/22/2000

Three-Judge Court Requested

COMPLAINT

The City of Winchester alleges that:

1. This is an action brought for declaratory relief pursuant to Section 4 of the Voting Rights Act of 1965, as amended, 42 U.S.C. §1973b (hereinafter "Section 4"). This Court has jurisdiction over this action pursuant to 28 U.S.C. §1343(a)(4), 28 U.S.C. §2201, 42 U.S.C. §1973b, and 42 U.S.C. §1973l(b).

2. Plaintiff City of Winchester ("the City") is located approximately 70 miles from Washington, D.C., at the northern entrance to the Shenandoah Valley. The City of Winchester covers 9.3 square land miles.

3. The City's governing body is a thirteen-member body consisting of twelve elected city council members and a mayor. The City is divided into two wards (the First Ward and the Second Ward), with six members of the City Council elected from each ward. Terms of office

for council members are four years in length and are staggered such that six members (three from each ward) are up for election every two years. The mayor is elected at-large in a citywide vote. A plurality win system is in effect for all city offices.

4. The Second Ward contains two voting precincts and the First ward contains three voting precincts. There are five polling places in the City of Winchester, one polling place for each precinct (and a Central Absentee precinct located at City Hall for November general elections only). The five polling locations are situated at convenient places for voters throughout the City. The City Council last redistricted the two wards pursuant to an ordinance passed on November 12, 1991. The Department of Justice precleared the City's redistricting plan on March 16, 1992.

5. The only other governmental unit operating within the City of Winchester is the Winchester City School Board (hereafter, "School Board"). The School Board is a nine-member body appointed by the Winchester City Council. Four members of the School Board are selected for at-large positions and five others are selected one from each precinct. School board members serve three-year terms and are limited to two consecutive terms. Presently, one of the nine City school board members is black. Black citizens have served on the Winchester City School Board continuously from 1974 to the present.

6. The City of Winchester Virginia has a total population of 21,947, according to the 1990 census. Of this number, 2199 persons (or 10 %) are black and 219 (or 1%) are Hispanic. The voting age population, according to the 1990 census is 17,205. Of this number, 1566 (9.1%) are black and 163 (0.9%) are Hispanic.

7. Like all jurisdictions in Virginia, the City of Winchester does not maintain any current voting statistics by race. According to a 1968 report of the U.S. Civil Rights Commission, there

were 5309 persons registered to vote in the City as of 1964. Of this number, 174 (or 3.3%) were black. Black citizens have been allowed to register and vote in Winchester since at least 1938. In that year, 130 black residents were registered to vote in the City.

8. The number of registered voters in the City of Winchester has grown over the last few decades. Between 1970 and 1980, the number of voters in the City was between 7000 and 8000 voters. In 1985, the number of registered voters grew to 8711. By 1994, the City's registered voter population exceeded 9000 persons for the first time (9207).

9. In recent years, the number of registered voters in Winchester has continued to grow. By 1996, there were 10,206 registered voters, and as of August 1999, the number had swelled to 11,768. As of 1999, more than two-thirds (68.4%) of the City's 1990 voting age population was registered to vote. In the year 2000, the number of registered voters in Winchester has grown to 12,710.

10. Voter turnout in elections varies according to the offices up for election. In the November 1992 Presidential election, for example, 86.1% (7728 of 8939) of the City's registered voters cast ballots. In the 1996 Presidential election, over 72% of the City's electorate turned out to vote. Most recently in the 2000 Presidential election, over 62.6% of the City's registered voters went to the polls. In the General Election for Governor held in November 1989, 68.5% of the registered voters turned out to vote. Similarly, in the 1993 gubernatorial elections, 64.5% of the City's registered voters voted. Voter turnout for Winchester City Council elections in the last five cycles (1992, 1994, 1996, 1998, and 2000) has been 50%, 35%, 32%, 20%, and 21%, respectively.

11. Black citizens have been able to seek and obtain election to the Winchester City Council. In modern times, (*i.e.*, since 1974), there have been 4 black candidates who have

sought election to the city council in 7 different city council races. Two of these candidates have successfully attained a seat on the Winchester City Council (in 1976 and 1994). No black candidates sought election to the city council in 1996, 1998, or 2000.

11. As a political subdivision of the Commonwealth of Virginia, plaintiff City of Winchester has been subject to certain special remedial provisions of the Voting Rights Act, including the provisions of Section 5 of the Act, 42 U.S.C. §1973c. Under Section 5 of the Act, known as the "preclearance" provisions, covered jurisdictions, including the City of Winchester, are required to seek and obtain preclearance from either this Court or from the United States Attorney General of any change affecting voting, and such preclearance must be obtained prior to implementation.

12. Since its inception in 1965, the Voting Rights Act has allowed the States and political subdivisions, which are subject to these special provisions of the Act, to exempt themselves from coverage under the Act's special remedial provisions, if they can satisfy standards established in the Voting Rights Act.

13. In 1982, Congress made changes in the exemption standards of the Act. As amended in 1982, Section 4 of the Voting Rights Act provides that States and political subdivisions covered under the special provisions of the Act are entitled to a declaratory judgment in this Court granting an exemption from the Act's special remedial provisions if, during the ten years preceding the filing of the action:

> A) no test or device has been used either for the purpose or with the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group, within the State or political subdivision seeking a declaratory judgment;
> B) no final judgment has been entered by any court determining that the political subdivision has denied or abridged the right to vote on account of race, color, or membership in a language minority group;
> C) no Federal examiners have been assigned to the political subdivision;

D) all governmental units within the political subdivision have complied with the preclearance provisions of Section 5 of the Voting Rights Act, 42 U.S.C. 1973c; and
E) the Attorney General has not interposed any objection to any proposed voting change within the political subdivision and no declaratory judgment has been denied with regard to such a change by this Court under Section 5.

14. As amended in 1982, Section 4 of the Act also requires States and political subdivisions seeking an exemption from the Act's special provisions to show that, during the pendency of the declaratory judgment action seeking such exemption:

A) Any voting procedure or method of election within the state or political subdivision exists which inhibits or dilutes equal access to the electoral process has been eliminated;
B) Constructive efforts have been made by the political subdivision to eliminate any intimidation or harassment of persons exercising rights under the Voting Rights Act; and
C) Expanded opportunities for convenient registration and voting exists within the State or political subdivision.

12. Over the years, the City of Winchester has made numerous submissions to the Department of Justice seeking preclearance of voting changes under Section 5 of the Voting Rights Act. Since 1983, for example, over 61 voting changes have been submitted for Section 5 preclearance. The City has submitted all voting changes for Section 5 preclearance to the Department of Justice in a timely fashion over the years.

13. The defendant Attorney General has approved each and every voting change that has been submitted by the City for preclearance under the Voting Rights Act. Since passage of the Voting Rights Act in 1965, not a single objection has been interposed by the Department of Justice to any voting change in the City of Winchester. In approving each and every change, the defendants have concluded that the voting changes submitted were free of a racially discriminatory purpose or a racially discriminatory effect. Many of the voting changes made over the years in the City of Winchester and submitted for Section 5 preclearance actually

expanded the opportunities for City residents to become registered voters and to cast ballots.

14. Voter registration opportunities in the City of Winchester are readily and equally available to all citizens. The voter registration office for the City is located in downtown Winchester, a central and convenient location within the City. The voter registration office is open from 9 a.m. to 5 p.m. Monday through Friday. In addition, the registration office is also open from 9 a.m. to 5 p.m. on the two Saturdays before all elections. Voters may also register by mail, and voter registration applications are available at a number of convenient locations across the City.

15. While in past years most voters became registered at the City Registrar's office, the implementation of the National Voting Rights Act has changed the origin of the great majority of registration applications. In 1998, for example, there were 1986 new voter registrations for the City. Of this number, 1827 (92%) filled out their voter registration applications at DMV offices. Of the remaining 157 applications, 110 registered in person, 37 registered by mail and 12 were sent in by state agencies.

16. The City's three-member Electoral Board appoints persons each February to work as poll officials. Although, the City has found in difficult over the years to find enough persons of any race willing to serve as poll officials, the opportunities for minority residents of the City to become poll officials are meaningful and equal to those enjoyed by whites. In recent years, voter registration applications in Winchester (including the one used at DMV and public assistance agencies) also have included a special section soliciting persons to serve as poll officials. No person who has ever expressed an interest in becoming a poll official has been turned down.

17. Black citizens have served as poll officials in the City of Winchester. Over the last ten years, for example, black persons have served as poll workers in 10 consecutive elections.

18. There is no evidence that any person in the City of Winchester has been denied the right to vote on account of race, color, or membership in a minority language group since at least 1965 when the Voting Rights Act was enacted.

19. No "test or device" as defined in the Voting Rights Act (42 U.S.C. §1973b(c)) has been used in the City of Winchester as a prerequisite to either registering or voting for at least the preceding ten years.

20. The City of Winchester has never been the subject of any lawsuit in which it was alleged that a person (or persons) was being denied the right to vote on account of race, color, or membership in a language minority group.

21. The City of Winchester has not employed any voting procedures or methods of election that inhibit or dilute equal access to the electoral process by minority voters in the City. Under the City's current election method, black voters are not been denied an equal opportunity to elect candidates of their choice to the City Council. None of the City's election practices or procedures has been abandoned in the face of any lawsuit or potential challenge.

22. No Federal Examiners have ever been appointed or assigned to the City of Winchester under Section 3 of the Voting Rights Act, 42 U.S.C. §1973a.

23. There are no known incidents in the City of Winchester where any person exercising his or her right to vote has been intimidated or harassed at the polls (or while attempting to register).

24. The allegations set forth in paragraphs 12 through 23, above, if established, entitle the City of Winchester to a declaratory judgment under Section 4 of the Voting Rights Act, 42 U.S.C. §1973b, exempting the County from the special remedial provisions of the Voting Rights Act.

25. Pursuant to 42 U.S. C. §1973b, the City of Winchester has "publicize[d] the intended commencement ... of [this] action in the media serving [the City] and in the appropriate United States post offices." The City published a legal Notice that it intended to commence this bailout action in The Winchester Star newspaper on May 30 and June 6, 2000. The Winchester Star is a newspaper published in the City of Winchester with a general circulation over 22,500 in the areas of the City of Winchester, and the Counties of Frederick and Clarke, Virginia. In addition to the aforementioned publications, Notices that the City of Winchester would be seeking this bailout judgment also have been posted at public locations throughout the City, including the City's libraries, the City's post offices, Winchester City Hall, Winchester Social Services Center, and the Joint Judicial Center.

26. The City also conducted a public hearing in the summer of 2000 on its intention to seek a bailout from coverage under the special provisions of the Voting Rights Act. Notices advertising the public hearing were published in The Winchester Star on May 30 and June 6, 2000, and were posted at public locations throughout the City, including the City's libraries, the City's post offices, City Hall, Winchester Social Services Center, and the Joint Judicial Center.

WHEREFORE, plaintiff the City of Winchester respectfully prays that this Court:

A. Convene a three-judge court, pursuant to 28 U.S.C.§2284 and 42 U.S.C. §1973b, to hear the claims raised in plaintiff's complaint;

B. Enter a declaratory judgment that the City of Winchester is entitled to a bailout from the special remedial provisions of the Voting Rights Act; and

C. Grant such other relief as may be necessary and proper as the needs of justice may require.

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CITY OF WINCHESTER, VIRGINIA,	)	
	)	
Plaintiff,	)	
	)	
JOHN D. ASHCROFT, Attorney General of the United States of America, WILLIAM R. YEOMANS, Acting Assistant Attorney General, Civil Rights Division,	)	Civil Action No. 1:00CV03073
	)	(DHG, RCL, ESH)
	)	(Three-Judge Court)
	)	
Defendants.	)	
	)	

STIPULATION OF FACTS

This action was instituted by the City of Winchester, Virginia, a political subdivision of the Commonwealth of Virginia (hereafter, "the City"). The City seeks a declaratory judgment pursuant to Section 4(a) of the Voting Rights Acts of 1965, as amended, 42 U.S.C. 1973b.

The parties have jointly moved this three-judge Court for entry of a Consent Judgment and Decree to resolve this action. In support of that motion, the parties have entered into the following stipulation of facts. The facts in this stipulation may be received into evidence in lieu of further proof of testimony.

It is hereby stipulated by and between the respective parties that:

1. Plaintiff City of Winchester is a political subdivision of the Commonwealth of Virginia and is a political subdivision of a state within the meaning of Section 4(a) of the Voting Rights Act, 42 U.S.C. 1973b(a)(1). The City is located approximately 70 miles from Washington, D.C., at the northern entrance to the Shenandoah Valley. The City of Winchester covers 9.3 square land miles.

2. The Winchester City School Board (hereafter "School Board") is a nine-member body appointed by the Winchester City Council. Four members of the School Board are selected for at-large positions and five others are selected one from each precinct. School board members serve three-year terms and are limited to two consecutive terms. The Winchester City School Board has had one black member continuously from 1974 to the present.

3. The City of Winchester is a covered jurisdiction subject to the special provisions of the Voting Rights Act, including Section 5 of the Act, 42 U.S.C. 1973c. Under Section 5, the City of Winchester is required to obtain preclearance from either this Court or from the Attorney General for any change in voting standards, practices and procedures since the coverage date of the Act in Virginia (i.e., November 1, 1964). There are no separate governmental units within the City.

4. According to the 2000 Census, the City has a total population of 23,585. Of this number, 2,470 persons (10.5 percent) are black non-Hispanic persons of one race and 1,527 (6.5 percent) are Hispanic. The voting age population, according to the 2000 Census is 18,473. Of this number, 1,767 (9.6 percent) are black non-Hispanic persons of one race and 1,081 (5.9 percent) are Hispanic.

5. Like other jurisdictions in Virginia, the City of Winchester does not collect or maintain voter registration data by race. Black citizens have been allowed to register and vote in Winchester since at least 1938. Current data show, however, that a significant proportion of the City's voting age population is registered to vote.

6. The number of registered voters in the City of Winchester has grown over the last few decades. As of April 2001, there are 12,473 registered voters in the City. This number constitutes 67.5 percent of the City's 2000 voting age population. The number of registered voters in the City has steadily increased over the preceding decades. Between 1970 and 1980, the number of voters in the City was between 7,000 and 8,000 voters. In 1985, the number of registered voters grew to 8,711. By 1994, the City's registered voter population had grown to 9,207.

7. The City is governed by a thirteen-member body consisting of twelve elected city council members and a mayor. The City is divided into two wards (the First Ward and the Second Ward), with six members of the City Council elected from each ward. Terms of office for council members are four years in length and are staggered such that six members (three from each ward) are up for election every two years. The mayor is elected at large in a citywide vote. A plurality win system is in effect for all city offices.

8. The Second Ward contains two voting precincts and the First ward contains three voting precincts. There are five polling places in the City of Winchester, one polling place for each precinct (and a Central Absentee precinct located at City Hall). The five polling locations are situated at convenient places for voters throughout the City. The City Council last redistricted the two wards pursuant to an ordinance passed on November 12, 1991. The Department of Justice precleared the City's redistricting plan on March 16, 1992.

9. Voter turnout in elections in the City of Winchester varies according to the offices up for election. In the November 1992 Presidential election, for example, 86.1 percent (7,728 of 8,939) of the City's registered voters cast ballots. In the 1996 Presidential election, over 72 percent of the City's electorate turned out to vote. Most recently, in the 2000 Presidential

election, over 62.6 percent of the City's registered voters went to the polls. In the General Election for Governor held in November 1989, 68.5 percent of the registered voters in the City turned out to vote. Similarly, in the 1993 gubernatorial elections, 64.5 percent of the City's registered voters voted. Voter turnout for Winchester City Council elections (measured as a percentage of those registered to vote who actually cast ballots) has ranged over the last five cycles from a low of 20 percent to a high of 50 percent.

10. Black citizens have been able to seek and obtain election to the Winchester City Council. Since 1974 there have been four black candidates who have sought election to the city council in seven different city council races. Two of these candidates have successfully attained a seat on the Winchester City Council (in 1976 and 1994). No black candidates sought election to the city council in 1996, 1998, or 2000.

11. The City of Winchester was designated as a jurisdiction subject to the special provisions of the Voting Rights Act on November 1, 1964, on the basis of determinations made by the United States Attorney General that Virginia maintained a "test or device" as defined by section 4(b) of the Act, and by the Director of the Census that fewer than 50 percent of the persons of voting age residing in the state voted in the 1964 presidential election. 42 U.S.C. 1973(b). The test or device

triggering preclearance coverage under Section 5 was an article of the Virginia Constitution providing for a literacy test as a prerequisite for becoming an elector. Va. Const. Art. II, Sec 20 (1902). The literacy test was repealed by the Virginia Constitution of 1971.

12. Within the ten-year period preceding the filing of this action, the City has made submissions of numerous changes affecting voting for preclearance review under Section 5 of the Act. 42 U.S.C. 1973c. The City has obtained Section 5 preclearance for all voting changes enforced within Winchester during the ten-year period preceding this action. The City has never sought Section 5 preclearance from this Court.

13. Voter registration opportunities in the City of Winchester are readily and equally available to all citizens. The voter registration office for the City is located in downtown Winchester, a central and convenient location within the City. The voter registration office is open from 9:00 a.m. to 5:00 p.m., Monday through Friday. In addition, the registration office is also open from 9:00 a.m. to 5:00 p.m. on the two Saturdays before all elections. Voters may also register by mail, and voter registration applications are available at a number of convenient locations across the City.

14. While in past years most voters became registered at the City Registrar's office, the implementation of the National

Voter Registration Act has changed the origin of the great majority of registration applications. In 1998, for example, there were 1,986 new voter registrations for the City. Of this number, 1,827 (92 percent) filled out their voter registration applications at Department of Motor Vehicles (hereafter "DMV") offices. Of the remaining 157 applications, 110 registered in person, 37 registered by mail and 12 were sent in by state agencies.

15. The City's three-member Electoral Board appoints persons each February to work as poll officials. The appointment of poll workers is for a one-year term. During the United States' investigation of this matter one minority individual who served as a poll worker in the City within the past ten years informed the United States that he believed he was the subject of disparate treatment compared to other poll workers and indicated that he volunteered to serve again but was not contacted. The City has no record of any person ever making these allegations, nor is the City aware of any poll worker receiving any disparate treatment or not being considered for a poll worker position after volunteering to serve. The City believes that in the preceding ten years, no member of a minority group has been denied an appointment to serve as a poll official, and that there is no evidence that any eligible resident of Winchester who has expressed an interest in becoming an election official has been

denied the opportunity to do so.

16. In recent years, the State's voter registration applications (including the one used at DMV and public assistance agencies throughout Winchester) have included a special section soliciting persons to serve as poll officials. All persons expressing an interest in serving as a poll official on these applications have been referred to the Electoral Board for consideration and appointment.

17. Minority citizens have served as poll officials in the City of Winchester. There have been three elections in the City within the past ten years in which there were no black poll workers. The City has no record of any minority person having asked to serve as a poll worker in those three elections. At least one black person has served as a poll worker in each election in Winchester between 1989 and 1996, and in each election held since 1999.

18. No person in the City of Winchester has been denied the right to vote on account of race, color, or membership in a minority language group for at least the preceding ten years.

19. No "test or device" as defined in Section 4 of the Voting Rights Act (42 U.S.C. 1973b(c)) has been used in the City of Winchester as a prerequisite to either registering or voting for at least the preceding ten years.

20. The City of Winchester has never been the subject of

any lawsuit in which it was alleged that a person (or persons) was being denied the right to vote on account of race, color, or membership in a language minority group. Nor has any court of the United States issued any final judgment to this effect.

21. There is no indication that the City of Winchester has engaged in violations of any provision of the Constitution or laws of the United States or any State or political subdivision with respect to discrimination in voting on account of race or color or membership in a language minority group for at least the preceding ten years.

22. The City of Winchester does not employ any voting procedures or methods of election that inhibit or dilute equal access to the electoral process by minority voters in the City.

23. No voting practices or procedures have been abandoned by the City or challenged on the grounds that such practices or procedures would have either the purpose or the effect of denying the right to vote on account of race or color, or membership in a language minority group.

24. No Federal Examiners have ever been appointed or assigned to the City of Winchester under Section 3 of the Voting Rights Act, 42 U.S.C. 1973a.

25. There are no known incidents in the City of Winchester where any person exercising his or her right to vote at the polls has been intimidated or harassed.

26. Pursuant to 42 U.S. 1973b, the City of Winchester has "Publicize(d) the intended commencement . . . of (this) action in the media serving (the City) and in the appropriate United States post offices." The City published a legal Notice that it intended to commence this bailout action in The Winchester Star newspaper on May 30 and June 6, 2000. The Winchester Star is a newspaper published in the City of Winchester, and the Counties of Frederick and Clarke, Virginia. In addition to the aforementioned publications, Notices that the City of Winchester would be seeking a bailout judgment also have been posted at public locations throughout the City, including the City's libraries, the City's post offices, Winchester City Hall, Winchester Social Services Center, and the Joint Judicial Center. In addition, the City has arranged for publication of a Notice publicizing the proposed settlement of this action pursuant to 42 U.S.C. 1973b in The Winchester Star on April 27, 2001. The City also conducted a public hearing on June 15, 2000, with regard to its intention to seek a bailout from coverage under the special provisions of the Voting Rights Act, which was attended by approximately six members of the minority community. Notices advertising the public hearing were published in The Winchester Star on May 30 and June 6, 2000, and were posted at public locations throughout the City, including the City's libraries, the City's post offices, City Hall, Winchester Social Services

Center, and the Joint Judicial Center.

27. The United States has determined that it is appropriate to consent to a declaratory judgment in this action pursuant to Section 4(a)(9) of the Voting Rights Act, notwithstanding the United States' belief that the City enforced, before Section 5 preclearance, a voting change occasioned by the City's 1980 agreement with Frederick County, which was approved by a State court and updated in 1994, to waive City-initiated annexation rights through January 1, 2006. Although the City takes the position that no voting changes were occasioned by its agreement with Frederick County, the City submitted the agreement to the Attorney General, and it was precleared on July 25, 2000. The United States' consent is premised upon an understanding that Congress intended Section 4(a)(9) to permit bailout in those cases where the Attorney general is satisfied that the statutory objectives of encouraging Section 5 compliance and preventing the use of racially discriminatory voting practices would not be compromised by such consent, the fact that the annexation agreement was submitted promptly and precleared once brought to Plaintiffs' attention, and the absence of any indication that the City did not seek preclearance of the agreement earlier in order evade a Section 5 objection.

28. The United States' consent in this action also is based upon the agreement between the parties to the terms in the

Consent Judgment and Decree. As the result of the United States' investigation of this matter several issues of concern were brought to the attention of the City. One concern of the United States was that an all-white advisory panel, appointed by city officials in 1999 and including some city council members, had in a February 2000 report recommended changes to the City's method of election that, in the view of the United States, potentially could have had a retrogressive effect upon minority voting strength if they had been enacted. The Winchester City Council promptly rejected all of the recommendations in the report, in part because of concerns that the Council had on the potential impact on minority voters of some of the recommended changes. A second concern of the United States was the extent to which the City had, as required by Section 4(a)(1)(F)(iii), "engaged in other constructive efforts, such as . . . the appointment of minority persons as election officials throughout the jurisdiction and at all stages of the election and registration process." In addition, some opposition to bailout was expressed at the City's June 15, 2000 public hearing by one individual; although this individual did not represent to the Winchester City Council that he spoke on behalf of any group, and was not identified or recognized by the City Council as being a spokesperson for any group, he was, at that time, President of the local NAACP. In response to these concerns, the City agreed

to the provisions contained in Paragraphs III, IV, V, VI and VII of the Consent Judgment and Decree. The United States is satisfied that these provisions provide a reasonable means to ensure that the requested declaratory judgment does not result in voting-related discrimination. In light of these and the other circumstances in this case, including the fact that there are no defendant-intervenors, the United States believes that bailout should not be denied.

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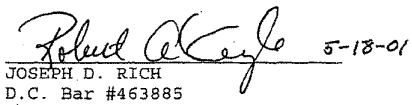

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CITY OF WINCHESTER, VIRGINIA, Plaintiff,	)	
JOHN D. ASHCROFT, Attorney General of the United States of America, WILLIAM R. YEOMANS, Acting Assistant Attorney General, Civil Rights Division, Defendants.	)	Civil Action No. 1:00CV03073 (DHG, RCL, ESH) (Three-Judge Court)

CONSENT JUDGMENT AND DECREE

This action was initiated by the City of Winchester, a political subdivision of the Commonwealth of Virginia (hereafter "the City"). Defendants John D. Ashcroft, Attorney General of the United States, and William R. Yeomans, Acting Assistant Attorney General, Civil Rights Division, have been substituted for their predecessors, Janet Reno and Bill Lann Lee. The City is subject to the provisions of Section 5 of the Voting Rights Act of 1965, as amended. 42 U.S.C. 1973c. The City seeks a declaratory judgment ending its coverage under Section 4 of the Voting Rights Act, 42 U.S.C. 1973b. A three-judge court has been requested as provided in 42 U.S.C. 1973b(a)(5) and 28 U.S.C. 2284.

The Defendant United States, upon investigation, has conferred with the Plaintiff City of Winchester, and the parties have agreed that the Plaintiff is entitled to the requested declaratory judgment, subject to the terms and conditions

(2) 14

specified herein. 42 U.S.C. 1973b(a)(9). The parties have filed a joint motion, accompanied by a Stipulation of facts, for entry of this Consent Judgment and Decree.

I. **BACKGROUND**

Section 4(a) of the Voting Rights Act provides that a State or political subdivision subject to the special provisions of the Act may be exempted from those provisions if it can demonstrate in an action for a declaratory judgment before the United States District Court for the District of Columbia that it has both 1) complied with the Voting Rights Act during the ten-year period prior to filing the action; and 2) taken positive steps both to encourage minority political participation and to remove structural barriers to minority electoral influence.

In order to demonstrate compliance with the Voting Rights Act during the ten-year period prior to commencement of a declaratory judgment action under Section 4(a), a political subdivision in Virginia must satisfy five conditions: (1) no test or device may have been used within the political subdivision during that ten-year period for the purpose or with the effect of denying or abridging the right to vote on account of race or color; (2) no court of the United States may have issued a final judgment during that ten-year period that the right to vote has been denied or abridged on account of race or color within the territory of the political subdivision; no consent decree,

settlement or agreement may have been entered into during that ten-year period that resulted in the abandonment of a voting practice challenged on such grounds; and no such claims may be pending at the time the declaratory judgment action is commenced; (3) no Federal examiners may have been assigned to the political subdivision during the ten-year period preceding commencement of the declaratory judgment action; (4) the political subdivision and all governmental units within its territory must have complied with Section 5 of the Voting Rights Act, 42 U.S. C. § 1973c, during that ten-year period, including the requirement that voting changes covered under Section 5 were not enforced without Section 5 preclearance, and that all voting changes denied Section 5 preclearance by the Attorney General or the District Court for the District of Columbia have been repealed; and (5) neither the Attorney General nor the district court for the District of Columbia may have denied Section 5 preclearance to a submission by the political subdivision or any governmental unit within its territory during that ten-year period, nor may any Section 5 submissions or declaratory judgment actions be pending. 42 U.S.C. 1973(a)(1)(A-E).

Also, to obtain the declaratory judgment, a political subdivision and all governmental units within its territory must have eliminated voting procedures and methods of election that inhibit or dilute equal access to the electoral process. 42

U.S.C. 1973b(a)(1)(F)(i). In addition, the political subdivision must have engaged in constructive efforts to eliminate intimidation or harassment of persons exercising voting rights, and to expand the opportunity for convenient registration and voting for every person of voting age, and the appointment of minority persons as election officials throughout the jurisdiction and at all stages of the election and registration process. 42 U.S.C. 1973b(a)(1)(F)(ii-iii).

The political subdivision is required to present evidence of minority participation, including the levels of minority group registration and voting, changes in such levels over time and disparities between minority group and non-minority group participation. 42 U.S.C. 1973b(a)(2). The political subdivision may not in the preceding ten years have engaged in violations of any provision of the Constitution or laws of the United States or any State or political subdivision with respect to discrimination in voting on account of race or color. 42 U.S.C. 1973b(a)(3). Finally, the political subdivision must provide public notice of its intent to seek a Section 4(a) declaratory judgment. 42 U.S.C. 1973b(a)(4).

II. **FINDINGS**

Pursuant to the parties' Stipulations, this Court finds as follows:

1. The City of Winchester is a political subdivision of the Commonwealth of Virginia, and a political subdivision of a state within the meaning of Section 4(a) of the Voting Rights Act, 42 U.S.C. 1973b(a)(1). See Stipulation of Facts, Par. 1.

2. There are no separate governmental units within the City of Winchester. See Stipulation of Facts, Par. 3.

3. No court of the United States has issued a final judgment during the ten years preceding the commencement of this action that the right to vote has been denied or abridged on account of race or color in the City of Winchester. See Stipulation of Facts, Par. 20.

4. No Federal Examiners have been to the City of Winchester. See Stipulation of Facts, Par. 24.

5. The City of Winchester has obtained Section 5 preclearance for all voting changes enforced within Winchester during the ten-year period preceding this action. With respect to a February 20, 1980 agreement with Frederick County to suspend all annexations, until January 1, 2006, the United States and the City disagree as to whether that agreement constituted the enactment or implementation of any voting-related changes that would have required Section 5 preclearance. In any event, at the

request of the Department of Justice, the City submitted the February 20, 1980 agreement for Section 5 preclearance nearly a year ago under the Voting Rights Act, and preclearance was obtained on July 25, 2000. See Stipulation of Facts, Pars. 12, 27.

6. All voting changes submitted by the City under Section 5 have been precleared by the Attorney General. No Section 5 submission by the City of Winchester is pending before the Attorney General. Winchester has never sought Section 5 judicial preclearance from this court. See Stipulation of Facts, Par. 12.

7. No evidence of increased minority participation is available because Virginia does not track voter registration and turnout by race. In recent years the overall level of voter registration in the City has increased but overall voter turnout has declined. There is no indication that the decline in overall voter turnout is due to disproportionately lower levels of minority participation. See Stipulation of Facts, Pars. 5, 6, 9, 14.

8. During the course of the United States' investigation into the City of Winchester's voting and election procedures to determine the City's eligibility to obtain bailout, concerns have been raised about the low level of minority citizens serving as poll workers, the relatively small number of minority citizens serving on boards and committees appointed by the City Council,

and the City's eligibility to obtain a bailout under the Voting Rights Act. The City shares the concerns expressed concerning the low level of minority persons serving as poll officials and on appointed boards and commissions. The City takes the position that it has found it difficult to recruit persons in all racial groups to serve in these positions, and this difficulty has been exacerbated by the relatively small percentage of minority persons living in the City (e.g. the 2000 Census reports that the City is less than 10 percent black and less than 6 percent Hispanic in its voting age population). By entering into this Consent Decree, the City and the United States have agreed that the City is eligible for obtaining the requested declaratory judgment, subject to the conditions set forth herein. See Stipulation of Facts, Pars. 15, 16, 17.

9. The City of Winchester recognizes that in order to be eligible for a declaratory judgment under Section 4 of the Voting Rights Act, it is required to engage in constructive efforts to expand the appointment of minority persons as election officials throughout the jurisdiction and at all stages of the election and registration process. 42 U.S.C. 1973b(a)(1)(F)(ii-iii). The City of Winchester shall undertake additional affirmative efforts to facilitate the selection of minority officials in the election and registration process, and in the appointment of persons to serve on boards, committees, and commissions whose members are

appointed by city officials.

10. The City of Winchester has publicized the intended commencement and proposed settlement of this action in local media and in appropriate United States post offices as required under 42 U.S.C. 1973b(a)(4). See Stipulation of Facts, Par. 24. No aggrieved party has sought to intervene in this action pursuant to 42 U.S.C. 1973b(a)(4).

Accordingly, it is hereby **ORDERED, ADJUDGED AND DECREED:**

I. The Plaintiff City of Winchester, Virginia, is entitled to a declaratory judgment in accordance with Section 4(a)(1) of the Voting Rights Act, 42 U.S.C. 1973b(a)(1);

II. The parties' Joint Motion for Entry of Consent Judgment and Decree is GRANTED, and the City of Winchester shall be exempt from coverage pursuant to Section 4(b) of the Voting Rights Act, 42, U.S.C. 1973b(b), subject to the terms provided herein.

III. The United States Attorney General shall retain the authority to certify the City of Winchester for federal observer coverage as provided under Section 8 of the Voting Rights Act, 42 U.S.C. 1973f, provided that any such certification shall be accompanied by a Notice to this Court and to the City of Winchester describing the reasons therefor.

IV. Notwithstanding any other provisions of this Consent Judgment and Order, any change in the electoral structure of the City government, or other change in the method of electing City

officials, that becomes effective on or before June 30, 2005, whether by local action or by the Virginia General Assembly, shall require preclearance by the United States Attorney General or by this Court, as provided in Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. This Paragraph does not require preclearance for redistricting of the boundaries of the city's present wards or voting precincts.

V. The City shall annually report the total number of persons by name and race who have served as election officials, including but not limited to the following categories:

a. Registrar and assistant registrar(s);

b. Officers of election in each precinct, designating for each precinct the chief officer, assistant officer and any other officer of election; and

c. Members of all committees, boards or commissions that deal with election or voting related matters.

VI. The city shall retain records of all voting changes until June 30, 2005, and shall provide annual reports identifying each such change.

VII. All reports required under this Order are due on the thirtieth day of June of each year commencing in the Year 2002. Reports shall be addressed to the Chief of the Voting Section, Civil Rights Division, United States Department of Justice.

VIII. This Court shall retain jurisdiction over this

action, subject to being reactivated upon application by either the Attorney General or any aggrieved person in accordance with the procedures set forth in 42 U.S.C. 1973b(a)(5).

IX. The parties shall bear their own costs.

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WILMA A. LEWIS
United States Attorney

Entered this 30 day of May, 2001.

Douglas Ginsburg
UNITED STATES CIRCUIT JUDGE

Royce C. Lamberth
UNITED STATES DISTRICT JUDGE

Ellen S. Huvelle
UNITED STATES DISTRICT JUDGE

APPENDIX TO THE STATEMENT OF BRADLEY J. SCHLOZMAN: VOTING SECTION CASES IN WHICH THE UNITED STATES' PARTICIPATION BEGAN SINCE OCTOBER 1, 1976

10/11/05

VOTING SECTION CASES IN WHICH THE UNITED STATES' PARTICIPATION BEGAN SINCE OCTOBER 1, 1976

I. Plaintiff

A. Section 2

1.	U.S. v. St. Landry Parish School Board	W.D. La.	10/06/76
2.	U.S. v. City of Kosciusko [Also states a claim under Section 5]	N.D. Miss.	05/09/77
3.	U.S. v. City Commission of Texas City	S.D. Tex.	05/12/77
4.	U.S. v. Uvalde Consolidated ISD	W.D. Tex.	09/19/77
5.	U.S. v. Temple Independent School District	W.D. Tex.	01/12/78
6.	U.S. v. Town of Bartelme	E.D. Wis.	02/15/78
7.	U.S. v. South Dakota (Shannon County)	D.S.D.	04/04/78
8.	U.S. v. Marengo County Commission	S.D. Ala.	08/25/78
9.	U.S. v. Thurston County	D. Neb.	08/30/78
10.	U.S. v. Humboldt County	D. Nev.	09/07/78
11.	U.S. v. City of Hattiesburg	S.D. Miss.	10/02/78
12.	U.S. v. Dallas County Commission & School Board	S.D. Ala.	10/19/78
13.	U.S. v. San Juan County	D.N.M.	06/21/79
14.	U.S. v. State of South Carolina	D.S.C.	04/18/80
15.	U.S. v. Clarke County Commission [Also states a claim under Section 5]	S.D. Ala.	09/02/80
16.	U.S. v. Halifax County	E.D.N.C.	10/06/83
17.	U.S. v. Conecuh County	S.D. Ala.	10/21/83
18.	U.S. v. Lowndes County	M.D. Ga.	10/27/83
19.	U.S. v. San Juan County	D. Utah	11/22/83
20.	U.S. v. City of Bessemer	N.D. Ala.	04/10/84

21.	U.S. v. Pike County	M.D. Ala.	05/11/84
22.	U.S. v. Dorchester County	D. Md.	12/05/84
23.	U.S. v. City of Cambridge	D. Md.	12/05/84
24.	U.S. v. Wilkes County Board of Education	S.D. Ga.	01/10/85
25.	U.S. v. Chaves County	D.N.M.	01/10/85
26.	U.S. v. City of Roswell Ind. School District[1/]	D.N.M.	03/12/85
27.	U.S. v. Darlington County	D.S.C.	08/21/85
28.	U.S. v. City of Los Angeles	C.D. Cal.	11/26/85
29.	U.S. v. McKinley County	D.N.M.	01/09/86
30.	U.S. v. City of Demopolis	S.D. Ala.	01/16/86
31.	U.S. v. Town of Indian Head	D. Md.	03/24/86
32.	U.S. v. Wilson County Board of Education	E.D.N.C.	08/22/86
33.	U.S. v. Mississippi County	E.D. Ark.	10/15/86
34.	U.S. v. City of Augusta	S.D. Ga.	01/08/87
35.	U.S. v. City of Roanoke	M.D. Ala.	02/02/87
36.	U.S. v. Granville County Board of Education	E.D.N.C.	04/30/87
37.	U.S. v. City of Spartanburg	D.S.C.	05/26/87
38.	U.S. v. State of Mississippi	S.D. Miss.	07/09/87
39.	U.S. v. Laurens County	D.S.C.	07/10/87
40.	U.S. v. Washington County	N.D. Miss.	07/30/87
41.	U.S. v. Wicomico County	D. Md.	09/24/87
42.	U.S. v. Bladen County Board of Education	E.D.N.C.	10/21/87
43.	U.S. v. Lenoir County Board of Education	E.D.N.C.	10/21/87
44.	U.S. v. City of Aiken	D.S.C.	11/24/87

1/ Claim against the City of Roswell Independent School District was included as part of the Chaves County complaint; the court severed the two claims on March 12, 1985.

45.	U.S. v. Los Angeles County	C.D. Cal.	09/08/88
46.	U.S. v. State of New Mexico and Sandoval County [Also states a claim under Section 203]	D.N.M.	12/05/88
47.	U.S. v. State of Arizona [Also states a claim under Section 4(f)(4)]	D. Ariz.	12/08/88
48.	U.S. v. Sampson County	E.D.N.C.	12/16/88
49.	U.S. v. City of Bennettsville	D.S.C.	09/26/89
50.	U.S. v. City of Magnolia	W.D. Ark.	04/26/90
51.	U.S. v. Brooks County	M.D. Ga.	08/10/90
52.	U.S. v. State of Georgia	N.D. Ga.	08/09/90
53.	U.S. v. City of Memphis	W.D. Tenn.	02/15/91
54.	U.S. v. Walthall County	S.D. Miss.	11/04/91
55.	U.S. v. State of Florida [Also states a claim under Section 5]	N.D. Fla.	06/23/92
56.	U.S. v. Screven County	S.D. Ga.	12/16/92
57.	U.S. v. City of Selma	S.D. Ala.	05/18/93
58.	U.S. v. Anson County Board of Education	W.D.N.C.	07/01/93
59.	U.S. v. Johnson County	S.D. Ga.	09/08/93
60.	U.S. v. Randolph County	M.D. Ga.	09/08/93
61.	U.S. v. Talbot County	M.D. Ga.	09/08/93
62.	U.S. v. Jones	S.D. Ala.	09/10/93
63.	U.S. v. Cibola County [Also states a claim under Section 203]	D.N.M.	09/27/93
64.	U.S. v. Socorro County [Also states a claim under Section 203]	D.N.M.	10/22/93
65.	U.S. v. Tallapoosa County	M.D. Ala.	11/12/93
66.	U.S. v. City of Monroe [Also states a claim under Section 5]	M.D. Ga.	06/02/94
67.	U.S. v. Attala County	N.D. Miss.	07/26/94

68.	U.S. v. City of Newport News	E.D. Va.	10/26/94
69.	U.S. v. Alameda County [Also states a claim under Section 203]	N.D. Cal.	04/13/95
70.	U.S. v. Lee County	N.D. Miss.	05/16/95
71.	U.S. v. City of Baton Rouge	M.D. La.	01/24/96
72.	U.S. v. New Roads	M.D. La.	09/19/96
73.	U.S. v. Board of Elections in the City of New York	S.D.N.Y.	04/03/97
74.	U.S. v. Bernalillo County [Also states a claim under Section 203]	D.N.M.	02/06/98
75.	U.S. v. City of Lawrence [Also states a claim under Section 203]	D. Mass.	11/05/98
76.	U.S. v. Day County and Enemy Swim Sanitary Dist. [Also states a claim under 42 U.S.C. 1971(a)]	D.S.D.	05/10/99
77.	U.S. v. Passaic City and Passaic County [Also states claims under Sections 203 and 208]	D.N.J.	06/02/99
78.	U.S. v. Marion County	M.D. Ga.	10/21/99
79.	U.S. v. Blaine County	D. Mont.	11/16/99
80.	U.S. v. City of Passaic	D.N.J.	02/03/00
81.	U.S. v. Benson County	D.N.D.	03/06/00
82.	U.S. v. Town of Cicero	N.D. Ill.	03/13/00
83.	U.S. v. Roosevelt County	D. Mont.	03/24/00
84.	U.S. v. State of South Dakota	D.S.D.	03/28/00
85.	U.S. v. City of Santa Paula	C.D. Cal.	04/06/00
86.	Grieg v. City of St. Martinville	W.D. La.	06/02/00
87.	U.S. v. Morgan City	W.D. La.	06/27/00
88.	U.S. v. Upper San Gabriel Valley Municipal Water District	C.D. Cal.	07/21/00
89.	U.S. v. City of Hamtramck	E.D. Mich.	08/04/00
90.	U.S. v. Charleston County	D.S.C.	01/17/01

91.	U.S. v. Crockett County	W.D. Tenn.	04/17/01
92.	U.S. v. Alamosa County	D. Colo.	11/27/01
93.	U.S. v. Osceola County [Also states a claim under Section 208]	M.D. Fla.	06/28/02
94.	U.S. v. Berks County [Also states claims under Sections 4(e) and 208]	E.D. Pa.	02/25/03
95.	U.S. v. Brown (Noxubee County) [Also states a claim under Section 11]	S.D. Miss	02/17/05
96.	U.S. v. Osceola County	M.D. Fla.	07/18/05
97.	U.S. v. City of Boston [Also states a claim under Section 203]	D. Mass.	07/29/05

B. Section 5 enforcement

1.	U.S. v. Board of Commissioners of Sheffield	N.D. Ala.	08/09/76
2.	U.S. v. Board of Trustees of Westheimer ISD	S.D. Tex.	01/20/77
3.	U.S. v. Board of Trustees of Midland ISD	W.D. Tex.	03/24/77
4.	U.S. v. Hawkins ISD	E.D. Tex.	03/26/77
5.	U.S. v. Board of Trustees of Trinity ISD	S.D. Tex.	03/28/77
6.	U.S. v. Board of Trustees of Chapel Hill ISD	E.D. Tex.	05/06/77
7.	U.S. v. City of Kosciusko [Also states a claim under Section 2]	N.D. Miss.	05/09/77
8.	U.S. v. Village of Dickinson	S.D. Tex.	02/17/78
9.	U.S. v. Board of Trustees of Somerset ISD	W.D. Tex.	03/10/78
10.	U.S. v. County Council of Chester County	D.S.C.	06/01/78
11.	U.S. v. Sumter County Council	D.S.C.	06/02/78
12.	U.S. v. County Council of Charleston County	D.S.C.	06/02/78
13.	U.S. v. Bd. of Commissioners of Colleton County	D.S.C.	06/02/78
14.	U.S. v. Barbour County Commission	M.D. Ala.	09/08/78
15.	U.S. v. Tripp County	D.S.D.	11/01/78

16.	U.S. v. City of Houston	S.D. Tex.	12/13/78
17.	U.S. v. Pike County Commission	M.D. Ala.	05/29/79
18.	U.S. v. State of South Dakota	D.S.D.	06/26/79
19.	U.S. v. State of South Carolina & Horry County	D.S.C.	12/21/79
20.	U.S. v. County School Trustees of Harris County	S.D. Tex.	01/18/80
21.	U.S. v. City of Port Arthur	E.D. Tex.	03/14/80
22.	U.S. v. Clarke County Commission [Also states a claim under Section 2]	S.D. Ala.	09/02/80
23.	U.S. v. Sumter County	N.D. Ala.	07/14/81
24.	U.S. v. Louisville M.S.S.D.	N.D. Miss.	12/01/81
25.	U.S. v. St. George	D.S.C.	07/20/83
26.	U.S. v. Lawrence County	S.D. Miss.	07/23/83
27.	U.S. v. City of Barnwell	D.S.C.	10/22/84
28.	U.S. v. Orangeburg County Council	D.S.C.	11/21/84
29.	U.S. v. State of Texas	W.D. Tex.	07/19/85
30.	U.S. v. Houston County	M.D. Ala.	07/31/85
31.	U.S. v. Victoria Independent School District	S.D. Tex.	04/04/86
32.	U.S. v. State of North Carolina	E.D.N.C.	12/09/86
33.	U.S. v. Cochise County	D. Ariz.	02/20/87
34.	U.S. v. Town of Summerville	D.S.C.	05/13/87
35.	U.S. v. Onslow County	E.D.N.C.	12/30/87
36.	U.S. v. State of Mississippi	S.D. Miss.	12/30/87
37.	U.S. v. City of Chester	D.S.C.	06/24/88
38.	U.S. v. City of Zebulon	N.D. Ga.	11/06/89
39.	U.S. v. LaVernia ISD	W.D. Tex.	03/02/90
40.	U.S. v. State of South Carolina	D.S.C.	04/09/90

41.	U.S. v. State of Texas	S.D. Tex.	11/27/90
42.	U.S. v. City of Houston	S.D. Tex.	10/17/91
43.	U.S. v. Autauga County Board of Education	M.D. Ala.	05/27/92
44.	U.S. v. State of Florida [Also states a claim under Section 2]	N.D. Fla.	06/23/92
45.	U.S. v. Yuma County	D. Ariz.	10/29/92
46.	U.S. v. Graham County	D. Ariz.	09/16/93
47.	U.S. v. City of Wilmer	N.D. Tex.	01/18/94
48.	U.S. v. City of Monroe [Also states a claim under Section 2]	M.D. Ga.	06/02/94
49.	U.S. v. Lee County	D.S.C.	06/06/94
50.	U.S. v. State of Arizona	D. Ariz.	09/06/94
51.	U.S. v. Moses	S.D. Tex.	03/29/95
52.	U.S. v. State of Mississippi [Also states a claim under the NVRA]	S.D. Miss.	04/20/95
53.	U.S. v. State of Georgia	N.D. Ga.	03/21/96
54.	U.S. v. State of Louisiana	W.D. La.	08/12/96
55.	U.S. v. State of Alabama	M.D. Ala.	10/19/98
56.	U.S. v. New York City Board of Elections [Also states a claim under UOCAVA]	S.D.N.Y.	10/28/98

C. Section 202

1.	U.S. v. County of Santa Clara	N.D. Cal.	11/04/80
2.	U.S. v. State of New York	N.D.N.Y.	11/01/88

D. Section 4(e), 4(f)(4) or 203

1.	U.S. v. City and County of San Francisco [States a claim under Section 203]	N.D. Cal.	10/27/78
2.	U.S. v. San Juan County [States a claim under Section 203]	D.N.M.	06/21/79

3.	U.S. v. San Juan County [States a claim under Section 203]	D. Utah	11/22/83
4.	U.S. v. McKinley County [States a claim under Section 203]	D.N.M.	01/09/86
5.	U.S. v. State of New Mexico and Sandoval County [States claims under Sections 2 and 203]	D.N.M.	12/05/88
6.	U.S. v. State of Arizona [States claims under Sections 2 and 4(f)(4)]	D. Ariz.	12/08/88
7.	U.S. v. Metropolitan Dade County [States a claim under Section 203]	S.D. Fla.	03/11/93
8.	U.S. v. Cibola County [States claims under Sections 2 and 203]	D.N.M.	09/27/93
9.	U.S. v. Socorro County [States claims under Sections 2 and 203]	D.N.M.	10/22/93
10.	U.S. v. Alameda County [States claims under Sections 2 and 203]	N.D. Cal.	04/13/95
11.	U.S. v. Bernalillo County [States claims under Sections 2 and 203]	D.N.M.	02/06/98
12.	U.S. v. City of Lawrence [States claims under Sections 2 and 203]	D. Mass.	11/05/98
13.	U.S. v. Passaic City and Passaic County [States claims under Sections 2, 203 and 208]	D.N.J.	06/02/99
14.	U.S. v. Orange County [States a claim under Section 203]	M.D. Fla.	06/28/02
15.	U.S. v. Berks County [States claims under Sections 2, 4(e), and 208]	E.D. Pa.	02/25/03
16.	U.S. v. Brentwood Union Free School District [States a claim under Section 203]	E.D.N.Y.	06/04/03
17.	U.S. v. San Benito County [States claims under Section 203 and HAVA]	N.D. Cal.	05/26/04
18.	U.S. v. San Diego County [States a claim under Section 203]	S.D. Cal.	06/23/04
19.	U.S. v. Suffolk County [States a claim under Section 203]	E.D.N.Y.	06/29/04
20.	U.S. v. Yakima County [States a claim under Section 203]	E.D. Wash.	07/06/04

21.	U.S. v. Ventura County [States a claim under Section 203]	C.D. Cal.	08/04/04
22.	U.S. v. Westchester County [States claims under Section 203 and HAVA]	S.D.N.Y.	01/19/05
23.	U.S. v. City of Azusa [States a claim under Section 203]	C.D. Cal.	07/14/05
24.	U.S. v. City of Paramount [States a claim under Section 203]	C.D. Cal.	07/14/05
25.	U.S. v. City of Rosemead [States a claim under Section 203]	C.D. Cal.	07/14/05
26.	U.S. v. City of Boston [States claims under Sections 2 and 203]	D. Mass	07/29/05
27.	U.S. v. Ector County [States a claim under Section 203]	W.D. Tex.	08/23/05

E. Section 208

1.	U.S. v. State of Arkansas	E.D. Ark.	10/30/84
2.	U.S. v. Passaic City and Passaic County [Also states claims under Sections 2 and 203]	D.N.J.	06/02/99
3.	U.S. v. Miami-Dade County	S.D. Fla.	06/17/02
4.	U.S. v. Osceola County [Also states a claim under Section 2]	M.D. Fla.	06/28/02
5.	U.S. v. Berks County [Also states claims under Sections 2 and 4(e)]	E.D. Pa.	02/25/03

F. Section 301

1.	U.S. v. State of Texas (Waller County)	S.D. Tex.	10/14/76

G. Overseas Citizens Voting Rights Act/
Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA)

1.	U.S. v. New York State Board of Elections	N.D.N.Y.	10/30/76
2.	U.S. v. State of Florida	N.D. Fla.	11/06/80
3.	U.S. v. State of Colorado	D. Colo.	10/29/82
4.	U.S. v. State of Colorado	D. Colo.	09/20/84
5.	U.S. v. State of Wisconsin	W.D. Wis.	10/31/84

6.	U.S. v. State of Alabama	M.D. Ala.	10/31/84
7.	U.S. v. State of Montana	D. Mont.	10/31/84
8.	U.S. v. State of Minnesota	D. Minn.	11/01/84
9.	U.S. v. State of Arkansas	E.D. Ark.	11/01/84
10.	U.S. v. State of New Hampshire	D.N.H.	11/02/84
11.	U.S. v. State of Hawaii	D. Haw.	11/04/86
12.	U.S. v. New York City Board of Elections	S.D.N.Y.	11/07/86
13.	U.S. v. Commonwealth of Pennsylvania	M.D. Pa.	04/22/88
14.	U.S. v. State of Idaho	D. Idaho	05/20/88
15.	U.S. v. State of Michigan	W.D. Mich.	07/28/88
16.	U.S. v. State of Wyoming	D. Wyo.	08/15/88
17.	U.S. v. State of Oklahoma	W.D. Okla.	08/22/88
18.	U.S. v. State of Mississippi	S.D. Miss.	09/25/89
19.	U.S. v. State of New Jersey	D.N.J.	06/05/90
20.	U.S. v. State of Tennessee	M.D. Tenn.	08/01/90
21.	U.S. v. State of Colorado	D. Colo.	08/10/90
22.	U.S. v. State of Tennessee	M.D. Tenn.	11/5/90
23.	U.S. v. State of Texas	W.D. Tex.	05/13/91
24.	U.S. v. State of Wisconsin	W.D. Wis.	04/06/92
25.	U.S. v. State of New Jersey	D.N.J.	06/02/92
26.	U.S. v. State of Michigan	W.D. Mich.	08/03/92
27.	U.S. v. State of Delaware	D. Del.	09/11/92
28.	U.S. v. New York City Board of Elections	S.D.N.Y.	09/11/92
29.	U.S. v. State of Michigan	W.D. Mich.	12/3/93
30.	U.S. v. State of New Jersey	D.N.J.	06/07/94
31.	U.S. v. Orr	N.D. Ill.	12/11/95

32.	U.S. v. State of Mississippi	S.D. Miss.	03/11/96
33.	U.S. v. State of Oklahoma	W.D. Okla.	09/15/98
34.	U.S. v. New York City Board of Elections [Also states a claim under Section 5]	S.D.N.Y.	10/28/98
35.	U.S. v. State of Michigan	W.D. Mich.	08/08/00
36.	U.S. v. State of Texas	W.D. Tex.	03/22/02
37.	U.S. v. State of Oklahoma	W.D. Okla.	09/12/02
38.	U.S. v. Commonwealth of Pennsylvania	M.D. Pa.	04/16/04
39.	U.S. v. State of Georgia	N.D. Ga.	07/13/04

H. National Voter Registration Act (NVRA)

1.	Wilson v. U.S.[2/]	N.D. Cal.	12/20/94
2.	Condon v. Reno[3/]	D.S.C.	01/24/95
3.	U.S. v. State of Illinois	N.D. Ill.	01/23/95
4.	U.S. v. Commonwealth of Pennsylvania	E.D. Pa.	01/23/95
5.	U.S. v. State of Mississippi [Also states a claim under Section 5]	S.D. Miss.	04/20/95
6.	Commonwealth of Virginia v. U.S.[4/]	E.D. Va.	05/05/95
7.	U.S. v. State of Michigan	W.D. Mich.	06/12/95
8.	U.S. v. State of New York	E.D.N.Y.	11/13/96
9.	U.S. v. City of St. Louis	E.D. Mo.	08/14/02
10.	U.S. v. State of Tennessee	M.D. Tenn.	09/27/02
11.	U.S. v. Pulaski County	E.D. Ark.	04/16/04
12.	U.S. v. State of New York	N.D.N.Y	06/14/04

[2/] United States became a third party plaintiff after originally being named a defendant.

[3/] United States became a third party plaintiff after originally being named a defendant.

[4/] On July 6, 1995, the United States became a third party plaintiff after originally being named a defendant.

I. Voting Accessibility for the Elderly & Handicapped Act

J. Help America Vote Act (HAVA)

1.	U.S. v. San Benito County [Also states a claim under Section 203]	N.D. Cal.	05/26/04
2.	U.S. v. Westchester County [Also states a claim under Section 203]	S.D.N.Y.	01/19/05

K. Other

1.	U.S. v. City of Cambridge	D. Md.	11/25/85
2.	U.S. v. North Carolina Rep. Party (intimidation)	E.D.N.C.	02/26/92
3.	U.S. v. Brown (Noxubee County) (intimidation) [Also states a claim under Section 2]	S.D. Miss.	02/17/05

II. Plaintiff-Intervenor

A. Section 2

1.	Brown v. Bd. of School Comm'rs of Mobile Co.	S.D. Ala.	11/07/80
2.	Bolden v. City of Mobile	S.D. Ala.	05/08/81
3.	Sanchez v. King (State of New Mexico)	D.N.M.	03/10/82
4.	Ketchum v. Byrne (City of Chicago)	N.D. Ill.	09/15/82
5.	Clayton v. City of Laurel	S.D. Miss.	09/20/83
6.	Shakopee v. City of Prior Lake	D. Minn.	09/22/83
7.	Jordan v. City of Greenwood	N.D. Miss.	12/28/83
8.	Chisom v. Roemer (State of Lousiana)	E.D. La.	08/08/88
9.	Teague v. Attala County	N.D. Miss.	09/12/94

B.	Section 5 enforcement		
1.	Garcia v. Uvalde County	W.D. Tex.	12/09/76
C.	Defend constitutionality of redistricting plan		
1.	Smith v. Beasley[5/] (State of South Carolina)	D.S.C.	05/01/97
D.	Defend constitutionality of Voting Rights Act		
1.	James v. City of Sarasota	M.D. Fla.	02/03/83
2.	Williams v. City of Leesburg	M.D. Fla.	10/05/83
3.	McCord v. City of Ft. Lauderdale	S.D. Fla.	02/03/84
4.	Sierra v. El Paso Independent School District	W.D. Tex.	03/14/84
5.	Knox v. Milwaukee County	E.D. Wis.	04/23/84
6.	Montano v. City of Portales	D.N.M.	06/08/84
7.	Baker v. Gay (Camden Co.)	S.D. Ga.	06/08/84
8.	Simkins v. Guilford County	M.D.N.C.	06/08/84
9.	Chavez v. Clovis Municipal School District	D.N.M.	06/18/84
10.	McNeil v. City of Springfield	C.D. Ill.	01/17/86
11.	Askew v. City of Rome	N.D. Ga.	02/24/95
12.	Johnson v. Hamrick	N.D. Ga.	03/30/01
E.	National Voter Registration Act (NVRA)		
1.	Common Cause of Vermont v. Dean	D. Vt.	07/18/96

[5/] The United States originally sought to participate as amicus. On April 14, 1997, the court ordered the United States to participate as a party. On May 1, 1997, we sought to intervene and filed a complaint stating a claim under Section 5. The court never ruled on the motion to intervene.

III. Amicus Curiae

A. Section 2:

1.	Brooks v. State Board of Elections	S.D. Ga.	07/25/89
2.	Slaughter v. City of Birmingham	N.D. Ala.	08/24/89
3.	Southern Christian Leadership Conf. v. Siegelman	M.D. Ala.	08/13/90
4.	Campos v. City of Houston	S.D. Tex.	11/09/91
5.	Terrazas v. Slagle (state legislative redistricting)	W.D. Tex.	12/06/91
6.	Dallas County Board of Education v. Jones	S.D. Ala.	03/31/93
7.	Ruiz v. City of Santa Maria	C.D. Cal.	02/16/94
8.	Knight v. McKeithen [Also addresses issues under Section 5]	M.D. La.	08/19/94
9.	Stovall v. City of Cocoa	M.D. Fla.	02/24/99
10.	Johnson v. Governor of Florida	M.D. Fla.	09/21/00

B. Section 5 enforcement

1.	McCray v. Hucks (Horry County)	D.S.C.	12/28/76
2.	Gomez v. Galloway (Bee County)	S.D. Tex.	03/21/77
3.	Williams v. Sclafani (State of New York)	S.D.N.Y.	09/09/77
4.	Berry v. Doles (Peach County)	M.D. Ga.	01/11/78
5.	Arriola v. Harville (Jim Wells County)	S.D. Tex.	08/04/78
6.	Calderon v. McGee (Waco Ind. School Dist.)	W.D. Tex.	12/9/78[6/]
7.	Escamilla v. Stavley (Terrell County, Texas)	W.D. Tex.	01/26/79
8.	Stokes v. Warren County Bd. of Election Supervisors	S.D. Miss.	09/09/79
9.	Forte v. Barbour County Commission	M.D. Ala.	01/02/80
10.	McRae v. Board of Education of Henry County	N.D. Ga.	03/13/80
11.	Garcia v. Decker (Medina County)	W.D. Tex.	03/18/80

[6/] Date of amicus participation in the 5th Circuit.

12.	Garza v. Gates (Atascosa County)	W.D. Tex.	03/18/80
13.	Head v. Henry County Board of Commissioners	N.D. Ga.	03/28/80
14.	Miller v. Daniels (City of New York)	S.D.N.Y.	02/09/81
15.	Edge v. Sumter County	M.D. Ga.	03/13/81
16.	Herron v. Koch (City of New York)	S.D.N.Y.	09/08/81
17.	Terrazas v. Clements (State of Texas)	N.D. Tex.	02/11/82
18.	Flateau v. Anderson (State of New York)	S.D.N.Y.	03/25/82
19.	Fluker v. Conecuh County	S.D. Ala.	07/15/82
20.	Cavanagh v. Brock (State of North Carolina)	E.D.N.C.	04/5/83
21.	Lucas v. Bolivar County	N.D. Miss.	07/15/83
22.	Warren v. Krivanek (Hillsborough County)	N.D. Fla.	08/24/84
23.	McLaurin v. Sunflower County	N.D. Miss.	05/14/86
24.	Cobbs v. Grenada County	N.D. Miss.	06/25/87
25.	Lucas v. Townsend (Bibb County)	M.D. Ga.	11/01/88
26.	East Jefferson Parish Coalition v. Jefferson Parish	E.D. La.	02/21/90
27.	Mack v. Russell County Commission	M.D. Ala.	03/26/90
28.	Clark v. Roemer[2/] (State of Louisiana)	M.D. La.	09/27/90
29.	Dupree v. Mabus (City of Hattiesburg)	S.D. Miss.	03/25/91
30.	Tisdale v. Sheheen (State of South Carolina)	D.S.C.	05/17/91
31.	Watkins v. Fordice (State of Mississippi)	S.D. Miss.	07/15/91
32.	Jordan v. Fancher	N.D. Miss.	11/05/91
33.	LULAC of Texas v. Richards	W.D. Tex.	02/21/92
34.	Terrazas v. Slagle (Texas state senate)	W.D. Tex.	08/17/92

[2/] On December 21, 1990, the United States intervened to defend the constitutionality of Section 5 of the Voting Rights Act as applied by the Attorney General to the State of Louisiana.

35.	Reyna v. Castro County	N.D. Tex.	11/17/93
36.	White v. Alabama	M.D. Ala.	03/04/94
37.	Statewide Reapprnt. Adv'ry Comm. v. Campbell	D.S.C.	03/31/94
38.	Lopez v. Monterey County	N.D. Cal.	06/01/94
39.	Glasper v. City of Baton Rouge and East Baton Rouge Parish	M.D. La.	06/24/94
40.	Knight v. McKeithen (State of Lousiana) [Also addresses issues under Section 2]	M.D. La.	08/19/94
41.	Sullivan v. DeLoach (Waynesboro)	S.D. Ga.	10/31/95
42.	LULAC v. State of Texas	W.D. Tex.[9/]	12/17/96
43.	Cotera v. State of Texas	W.D. Tex.	10/28/98
44.	Boxx v. Bennett (Jefferson County)	M.D. Ala.	12/10/98
45.	Marascalco v. City of Grenada	N.D. Miss.	04/27/00
46.	Love v. Putnam County Board of Registrars	M.D. Ga.	07/14/00
47.	Bone Shirt v. Hazeltine (State of South Dakota)	D.S.D.	01/24/02
48.	Navajo Nation v. Arizona Ind. Redistrict. Comm.	D. Ariz.	05/20/02
49.	Martinez v. Bush (State of Florida)	S.D. Fla.	07/08/02
50.	Cannon v. City of Tallulah	W.D. La.	10/28/02
C.	National Voter Registration Act (NVRA)		
1.	Brenda K. v. Hooks	D.N.J.	05/15/98
2.	Clay v. City of St. Louis	E.D. Mo.	11/04/02
D.	Defend constitutionality of redistricting plan		
1.	Shaw v. Hunt	E.D.N.C.	03/01/94
2.	Quilter v. Voinovich	N.D. Ohio	11/17/94

[9/] Our Fifth Circuit participation began on December 17, 1996.

3.	Cleveland County Association v. Cleveland County, North Carolina Board of Commissioners	D.D.C.	04/30/97
4.	Cromartie v. Hunt	E.D.N.C.	06/20/98
5.	Fouts v. Mortham	S.D. Fla.	04/14/99

E. Other (district court)

1.	Leroy v. City of Houston (attorney's fees)	S.D. Tex.	03/29/85
2.	City of Franklin v. State Board of Elections	E.D. Va.	04/04/86
3.	Alexander v. Martin (State of North Carolina)	E.D.N.C.	03/09/87
4.	State of Alabama v. City of Bessemer	N.D. Ala.	03/25/87
5.	Kirksey v. Mabus & Martin v. Mabus	S.D. Miss.	12/29/88

F. Other (state court)

1.	Singer v. City of Alabaster	Ala. Cir. Ct.	09/18/00
2.	Singer v. City of Alabaster	Ala. Sup. Ct.	12/29/00

IV. Defendant

A. Section 5 declaratory judgment

1.	Hale County, Alabama v. U.S.	D.D.C.	02/16/77
2.	City of Rome, Georgia v. U.S. [Also contains bailout claim under Section 4]	D.D.C.	05/09/77
3.	Horry County, South Carolina v. U.S.	D.D.C.	09/27/77
4.	Apache County, Arizona High School District No. 90 v. U.S.	D.D.C.	10/20/77
5.	Donnell v. U.S. (Warren County, Mississippi)	D.D.C.	03/07/78
6.	Charlton County School Board, Georgia v. U.S.	D.D.C.	03/29/78
7.	State of Mississippi v. U.S.	D.D.C.	08/01/78
8.	City of Dallas, Texas v. U.S.	D.D.C.	09/05/79
9.	State of Mississippi v. U.S.	D.D.C.	12/27/79

10.	Comm'rs Court of Medina County, Texas v. U.S.	D.D.C.	01/25/80
11.	City of Lockhart, Texas v. U.S.	D.D.C.	01/25/80
12.	City of Port Arthur, Texas v. U.S.	D.D.C.	03/12/80
13.	State of South Dakota v. U.S.	D.D.C.	08/06/80
14.	City of Pleasant Grove, Alabama v. U.S.	D.D.C.	10/09/80
15.	Colleton County, South Carolina v. U.S.	D.D.C.	11/04/81
16.	Senate of the State of California v. U.S.	D.D.C.	11/17/81
17.	Busbee (State of Georgia) v. Smith	D.D.C.	03/08/82
18.	Sumter County, South Carolina v. U.S.	D.D.C.	04/01/82
19.	State of Mississippi v. U.S. (cong. redistricting)	D.D.C.	04/07/82
20.	State of Mississippi v. U.S. (legis. redistricting)	D.D.C.	09/20/82
21.	Baldwin County, Georgia v. U.S.	D.D.C.	10/31/83
22.	State of South Carolina v. U.S.	D.D.C.	12/6/83
23.	Halifax County, North Carolina v. U.S.	D.D.C.	05/17/84
24.	Brunswick-Glynn Co. Charter Comm'n, Ga. v. U.S.	D.D.C.	02/03/86
25.	State of North Carolina v. U.S.	D.D.C.	5/30/86
26.	Grenada County, Mississippi. v. U.S.	D.D.C.	04/07/87
27.	Bladen County, North Carolina v. U.S.	D.D.C.	11/03/87
28.	State of Mississippi v. U.S.	D.D.C.	12/21/87
29.	City Council of Augusta & Richmond Co., Ga. v. U.S.	D.D.C.	01/24/90
30.	State of Georgia v. Reno	D.D.C.	08/24/90
31.	State of Louisiana v. U.S.	D.D.C.	01/18/91
32.	Bolivar County, Mississippi v. U.S.	D.D.C.	08/26/91
33.	State of Texas v. U.S.	D.D.C.	09/20/91
34.	Walker v. U.S. (Gregg County, Texas)	D.D.C.	02/24/92
35.	Ellis County, Texas v. Barr	D.D.C.	05/11/92

36.	Calhoun County, Texas v. U.S.	D.D.C.	08/18/92
37.	Lee County, Mississippi v. U.S.	D.D.C.	04/06/93
38.	Monterey County, California v. U.S.	D.D.C.	08/11/93
39.	Castro County, Texas v. U.S.	D.D.C.	08/25/93
40.	State of Texas v. U.S. (Edwards Underground Water District)	D.D.C.	03/09/94
41.	Bossier Parish Louisiana School Board v. Reno	D.D.C.	07/11/94
42.	State of Texas v. United States (judgeships)	D.D.C.	07/14/94
43.	Baton Rouge and Parish of E. Baton Rouge v. U.S.	D.D.C.	09/23/94
44.	State of Arizona v. U.S. (judgeships)	D.D.C.	09/26/94
45.	State of New York v. U.S.	D.D.C.	10/13/94
46.	State of Georgia v. Reno (II)	D.D.C.	06/01/95
47.	State of Georgia v. Reno (III)	D.D.C.	07/25/95
48.	City of Andrews, Texas v. U.S.	D.D.C.	08/07/95
49.	State of Alabama v. Reno	D.D.C.	02/20/96
50.	City of Baton Rouge, Louisiana v. U.S.	D.D.C.	04/29/96
51.	State of Texas v. U.S.	D.D.C.	06/07/96
52.	State of Mississippi v. Reno	D.D.C.	07/23/96
53.	State of Louisiana v. U.S.	D.D.C.	02/04/97
54.	Commonwealth of Virginia v. Reno	D.D.C.	04/17/00
55.	City of Zachary, Louisiana v. Reno	D.D.C.	09/07/00
56.	State of Georgia v. Ashcroft	D.D.C.	10/10/01
57.	Louisiana House of Representatives v. Ashcroft	D.D.C.	01/14/02
58.	State of Florida by Butterworth v. Ashcroft	D.D.C.	05/14/02
59.	North Carolina State Board of Elections v. U.S.	D.D.C.	06/13/02
60.	State of North Carolina v. Ashcroft	D.D.C.	11/26/03

B. Bailout – Section 4

1.	El Paso County, Colorado v. U.S.	D.D.C.	02/01/77
2.	City of Rome, Georgia v. U.S. [Also contains request for declaratory judgment under Section 5]	D.D.C.	05/09/77
3.	State of Alaska v. U.S.	D.D.C.	03/21/78
4.	State of Idaho and Elmore County v. U.S.	D.D.C.	06/25/82
5.	Campbell County, Wyoming v. U.S.	D.D.C.	07/02/82
6.	State of Massachusetts v. U.S.	D.D.C.	03/31/83
7.	State of Connecticut v. U.S.	D.D.C.	10/20/83
8.	State of Alaska v. U.S.	D.D.C.	05/03/84
9.	Board of Comm'rs. of El Paso County, Colo. v. U.S.	D.D.C.	05/25/84
10.	Waihee (State of Hawaii) v. U.S.	D.D.C.	06/01/84
11.	City of Fairfax, Virginia v. Reno	D.D.C.	09/25/97
12.	Frederick County, Virginia v. Reno	D.D.C.	04/14/99
13.	Shenandoah County, Virginia v. Reno	D.D.C.	04/21/99
14.	Roanoke County, Virginia v. Reno	D.D.C.	09/06/00
15.	City of Winchester, Virginia v. Reno	D.D.C.	12/22/00
16.	City of Harrisonburg, Virginia v. Ashcroft	D.D.C.	02/14/02
17.	Rockingham County, Virginia v. Ashcroft	D.D.C.	02/28/02
18.	Warren County, Virginia v. Ashcroft	D.D.C.	10/10/02
19.	Greene County, Virginia v. Ashcroft	D.D.C.	09/08/03
20.	Pulaski County, Virginia v. Gonzales	D.D.C.	07/08/05
21.	Augusta County, Virginia v. Gonzales	D.D.C.	09/23/05

C. Bailout – Section 203			
1.	Doi v. Bell	D. Haw.	07/14/77
2.	County of Placer v. U.S.	E.D. Cal.	02/20/80
D. Defend constitutionality of Voting Rights Act			
1.	Boone v. United States	E.D. Pa.	09/21/04
E. Defend constitutionality of NVRA			
1.	Amalfitano v. U.S.	S.D.N.Y.	04/27/00
F. Section 5 enforcement			
1.	Rosso v. Henigan (California)	D.D.C.	10/11/77
2.	Blanding v. DuBose	D.S.C.	05/12/78
3.	Lenud v. Bell (Alabama)	D.D.C.	07/25/78
4.	Brown v. City of Shreveport	W.D. La.	10/07/96
5.	Wilson v. Jones (Dallas County, Alabama)	S.D. Ala.	10/25/96
G. Defend constitutionality of redistricting plan			
1.	Thornton v. Molpus	S.D. Miss.	10/11/94
2.	Elliot v. United States Department of Justice	M.D. Fla.	06/12/96
H. Other			
1.	Independent School District of Tulsa v. Bell (Section 203)	N.D. Okla.	11/12/77
2.	Reich v. Larson and Civiletti (Section 203)	E.D. Cal.	04/03/80
3.	NAACP v. Town of Hilton Head	D.S.C.	08/16/83
4.	Baham v. Treen (St. Tammany Parish)	M.D. La.	09/27/83
5.	Carr v. Broom (St. Tammany Parish)	E.D. La.	12/13/83
6.	Clark v. United States Attorney (City of Houston)	S.D. Tex.	11/01/85
7.	East Flatbush Election Committee v. Cuomo	E.D.N.Y.	04/29/86
8.	Groce v. McDaniel (Montgomery County)	S.D. Tex.	08/19/86
9.	Abramson v. Wynne	E.D. Va.	04/18/88

10.	Hunter v. United States Attorney	D.S.C.	12/08/89
11.	Hannah v. Cheney	S.D. Tex.	05/07/91
12.	Shaw v. Britt	E.D.N.C.	03/12/92
13.	Wetherell v. Barr	N.D. Fla.	04/10/92
14.	Medders v. Autauga County	M.D. Ala.	04/21/92
15.	Golding v. Barr	E.D. Va.	05/29/92
16.	Scott v. United States Department of Justice	M.D. Fla.	04/14/94
17.	Giles v. Ashcroft	S.D. Miss.	05/21/01
18.	Giles v. Ashcroft	D.D.C.	01/23/02

V. Defendant-Intervenor

A. Defend constitutionality of redistricting plan

1.	Hays v. State of Louisiana[9/]	W.D. La.	09/29/92
2.	Vera v. Richards[10/]	S.D. Tex.	03/02/94
3.	Johnson v. Miller	S.D. Ga.	03/30/94
4.	Johnson v. Smith	N.D. Fla.	07/18/94
5.	Perschall v. State of Louisiana	E.D. La.	05/22/95
6.	PAC for Middle America v. State Bd. of Elections	N.D. Ill.	10/19/95
7.	Johnson v. Miller (III)	S.D. Ga.	04/09/96
8.	Theriot v. Jefferson Parish	E.D. La.	05/02/96
9.	Able v. Wilkins	D.S.C.	05/03/96
10.	Cook v. Marshall County, Miss.	N.D. Miss.	07/18/96

B. Section 5

1.	Davis v. Ieyoub	W.D. La.	10/05/94

[9/] Originally participated as amicus; motion to intervene as defendant granted on July 6, 1994.

[10/] Originally participated as amicus; motion to intervene as defendant granted on May 20, 1994.

VI. Other

A. Response to Subpoena

1.	Cofield v. City of LaGrange, Georgia	D.D.C.	06/05/95
2.	Smith v. Beasley (South Carolina)	D.D.C.	03/12/96

B. Miscellaneous

1.	Rubalcaba v. City of Raymondville	S.D. Tex.	04/20/99

APPENDIX TO THE STATEMENT OF BRADLEY J. SCHLOZMAN: SECTION 5 DECLARATORY JUDGMENT ACTIONS—COMPLETE LISTING OF ALL ACTIONS FILED IN THE U.S. DISTRICT COURT FOR THE DISTRICT OF COLUMBIA SEEKING A DECLARATORY JUDGMENT THAT PROPOSED VOTING CHANGE DOES NOT VIOLATE SECTION 5

SECTION 5 DECLARATORY JUDGMENT ACTIONS
(UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA)

CASE TITLE	SUBJECT	DATE FILED	JURISDICTION	DATE OF DECISION	DECISION	CITATION OR CASE NUMBER
City of Petersburg v. U.S.	Annexation	03/71/72	Petersburg, VA	10/24/72	Denied	354 F. Supp. 1021 (D.D.C. 1972) aff'd mem., 410 U.S. 962 and mem. sub nom. Diamond v. U.S., 412 U.S. 901 (1973)
	Annexation and districting plan.			04/13/73	Granted without opposition	No. 509-72, (D.D.C.) aff'd mem. sub nom. Diamond v. U.S., 412 U.S. 901 (1973)
Vance v. U.S.	Party rules*	07/31/72	AL Democratic Party	11/30/72	Granted without opposition	No. 1529-72 (D.D.C.)
City of Richmond v. U.S.	Annexations	08/25/72	Richmond, VA	05/29/74	Denied	376 F. Supp. 1344, (D.D.C. 1974) vacated and remanded, 422 U.S. 358 (1975)
				08/10/76	Granted on remand	No. 1718-72 (D.D.C.)
Beer v. U.S.	Redistricting	07/25/73	New Orleans, LA	03/15/74	Denied	374 F. Supp. 363, (D.D.C. 1974) rev'd, 425 U.S. 130 (1976)
				07/29/76	Granted on remand	No. 1495-73 (D.D.C.)

* The jurisdiction filed this declaratory judgment action before seeking a determination from the Attorney General.

CASE TITLE	SUBJECT	DATE FILED	JURISDICTION	DATE OF DECISION	DECISION	CITATION OR CASE NUMBER
Griffith v. U.S.	Redistricting (congressional and legislative)	04/26/74	Kings and New York Counties, NY	05/03/74	Dismissed (lack of standing)	No. 74-648, appeal dismissed, No. 74-1486 (2d Cir. Sept. 23,1974)
Glynn County v. U.S.	Majority vote, staggered terms	01/07/76	Glynn County, GA	07/07/76	Dismissed voluntarily	No. 76-0028 (D.D.C.)
Wilkes County School District v. U.S.	At-large election	06/14/76	Wilkes County School District, GA	04/20/78	Denied	450 F. Supp. 1171, (D.D.C. 1978) aff'd mem., 439 U.S. 999 (1978)
consolidated with Wilkes County v. U.S.	At-large election	06/14/76	Wilkes County, GA	04/20/78	Denied	450 F. Supp. 1171, (D.D.C. 1978) aff'd mem., 439 U.S. 999 (1978)
Whitfield v. U.S.	Redistricting	09/01/76	Grenada County, MS	03/31/78	Dismissed (subsequent change reviewed administratively)	No. 76-1636 (D.D.C.)
Hale County v. U.S.	At-large election	02/16/77	Hale County, AL	09/04/80	Denied	496 F. Supp. 1206 (D.D.C. 1980)
City of Rome v. U.S.	Annexations; method of election	05/09/77	Rome, GA	04/04/79	Denied	472 F. Supp. 221, (D.D.C. 1979) aff'd, 446 U.S. 156 (1980)
Horry County v. U.S.	At-large election	09/27/77	Horry County, SC	12/11/78	Dismissed (subsequent change reviewed administratively)	449 F. Supp. 990 (D.D.C. 1978)

CASE TITLE	SUBJECT	DATE FILED	JURISDICTION	DATE OF DECISION	DECISION	CITATION OR CASE NUMBER
Apache County High School District No. 90 v. U.S.	Polling places; minority language assistance	10/20/77	Apache County, AZ	06/12/80	Denied	No. 77-1815 (D.D.C.)
Donnell v. U.S.	Redistricting*	03/07/78	Warren County, MS	07/31/79	Denied	No. 78-0392, (D.D.C.), aff'd mem., 444 U.S. 1059 (1980)
Charlton County Bd. of Ed. v. U.S.	Method of election (at-large)	03/29/78	Charlton County, GA	11/01/78	Granted	No. 78-0564 (D.D.C.)
Mississippi v. U.S.	Redistricting (legislative)	08/01/78	State	06/01/79	Granted	490 F. Supp. 569,(D.D.C. 1979) aff'd mem., 444 U.S. 1050 (1980)
City of Dallas v. U.S.	Redistricting*	09/05/78	Dallas, TX	12/07/79	Dismissed (subsequent change reviewed administratively)	482 F. Supp. 183 (D.D.C. 1979)
Mississippi v. U.S.	Method of election (open primary)	12/27/79	State	04/29/82	Dismissed (failure to prosecute)	No. 79-3469 (D.D.C.)
Commissioners Court v. U.S.	Redistricting	01/25/80	Medina County, TX	12/18/80	Dismissed (subsequent change reviewed administratively)	No. 80-0241 (D.D.C.)

CASE TITLE	SUBJECT	DATE FILED	JURISDICTION	DATE OF DECISION	DECISION	CITATION OR CASE NUMBER
City of Lockhart v. U.S.	Numbered posts; staggered terms	02/06/80	Lockhart, TX	07/30/81	Denied	No. 80-0364, (D.D.C.) vacated, 460 U.S. 125 (1983)
				07/15/83	Dismissed on remand	No. 80-0364
City of Port Arthur v. U.S.	Consolidation; redistricting	03/12/80	Port Arthur, TX	06/12/81	Denied	517 F. Supp. 987, (D.D.C. 1981) aff'd, 459 U.S. 159 (1982)
South Dakota v. U.S.	County organization	08/06/80	Todd and Shannon Counties, SD	12/01/81	Granted in part and denied (consent decree)	No. 80-1976 (D.D.C.)
City of Pleasant Grove v. U.S.	Annexations	10/09/80	Pleasant Grove, AL	10/25/85	Denied	623 F. Supp. 782, (D.D.C. 1985) aff'd, 479 U.S. 462 (1987)
Colleton County v. U.S.	Method of election	11/04/81	Colleton County, SC	04/28/82	Granted (consent decree)	No. 81-2664 (D.D.C.)
Senate of California v. Smith	Redistricting (state senate)*	11/17/81	State	04/26/82	Granted without opposition	No. 81-2767 (D.D.C.)
Busbee v. Smith	Redistricting (congressional)	03/08/82	State of Georgia	07/22/82	Denied	549 F. Supp. 494, (D.D.C. 1982) aff'd mem., 459 U.S. 1166 (1983)
County Council v. U.S.	Method of election (at-large)	04/01/82	Sumter County, SC	05/25/84	Denied	596 F. Supp. 35 (D.D.C. 1984)

CASE TITLE	SUBJECT	DATE FILED	JURISDICTION	DATE OF DECISION	DECISION	CITATION OR CASE NUMBER
Mississippi v. Smith	Redistricting (congressional)	04/07/82	State	04/11/83	Dismissed (subsequent change reviewed administratively)	541 F. Supp. 1329 ((D.D.C. 1982), appeal dismissed, 461 U.S. 912 (1983)
Mississippi v. U.S.	Redistricting (legislative)*	09/20/82	State	01/13/83	Dismissed (subsequent change reviewed administratively)	No. 82-2673 (1988 WL 90056 (D.D.C.))
Baldwin County School District v. Smith	At-large election	10/31/83	Baldwin County School District, GA	09/13/84	Dismissed (subsequent change reviewed administratively)	No. 83-3240 (D.D.C.)
South Carolina v. U.S.	Redistricting (state senate)*	12/06/83	State	09/04/84	Dismissed (subsequent change reviewed administratively)	No. 83-3626 (D.D.C.)
Halifax County v. U.S.	Method of election	05/17/84	Halifax County, NC	03/06/85	Dismissed voluntarily	No. 84-1551 (D.D.C.)
Brunswick-Glynn County Charter Comm. v. U.S.	Consolidation	02/03/86	Glynn County, GA	07/22/86	Dismissed (lack of standing)	No. 86-0309 (D.D.C.)
North Carolina v. U.S.	Staggered terms (judges)	05/30/86	State	10/02/87	Dismissed voluntarily	No. 86-1490 (D.D.C.)
Grenada County v. U.S.	Redistricting*	04/07/87	Grenada County, MS	07/30/87	Dismissed voluntarily	No. 87-0962 (D.D.C.)

CASE TITLE	SUBJECT	DATE FILED	JURISDICTION	DATE OF DECISION	DECISION	CITATION OR CASE NUMBER
Bladen County v. U.S.	Method of election	11/03/87	Bladen County, NC	05/16/88	Dismissed	No. 87-2974 (D.D.C.)
Mississippi v. U.S.	Method of election (judges)	12/21/87	State	12/29/88	Dismissed voluntarily	No. 87-3464 (D.D.C.)
City Council v. U.S.	Consolidation of city and county	01/24/90	City of Augusta and Richmond County, GA	08/24/92	Dismissed	No. 90-0171 (D.D.C.)
Georgia v. Reno	Creation of 62 additional superior court judicial positions	08/24/90	State	02/03/95	Granted	881 F. Supp. 7 (D.D.C 1995)
Louisiana v. U.S.	Creation of 2 additional at-large judicial positions	01/18/91	16th Judicial District Court	06/15/93	Dismissed (prior objection withdrawn upon administrative review of change in method of election)	No. 91-0122 (D.D.C.)
Bolivar County v. U.S.	Redistricting	08/26/91	Bolivar County, MS	12/20/94	Dismissed (D.J. granted to settlement redistricting plan & new polling place)	No. 91-2186 (D.D.C.)
Texas v. U.S.	Redistricting (congressional, legislative, & state board of education)*	09/20/91	State	09/17/92	Granted without opposition to senate plan (no objection to other plans after administrative review)	802 F. Supp. 481 (D.D.C. 1992)

CASE TITLE	SUBJECT	DATE FILED	JURISDICTION	DATE OF DECISION	DECISION	CITATION OR CASE NUMBER
Walker v. U.S.	Redistricting*	02/24/92	Gregg County, TX	05/19/92	Dismissed (subsequent change reviewed administratively)	No. 92-0480 (D.D.C.)
Ellis County v. U.S.	Redistricting	05/11/92	Ellis County, TX	10/06/92	Dismissed (subsequent change reviewed administratively)	No. 92-1110 (D.D.C.)
Calhoun County v. U.S.	Redistricting	08/18/92	Calhoun County, TX	12/10/92	Dismissed voluntarily (plan superseded by interim court-approved plan and no objection after administrative review)	No. 92-1890 (D.D.C.)
Lee County v. U.S.	Redistricting	04/06/93	Lee County, MS	04/26/94	Dismissed voluntarily	No. 93-0708 (D.D.C.)
Monterey County v. U.S.	Consolidation of municipal & justice courts with judges elected at large*	08/11/93	Monterey County, CA	11/07/93	Dismissed voluntarily	No. 93-1639 (D.D.C.)
Castro County v. U.S.	Redistricting	08/25/93	Castro County, TX	04/26/97	Dismissed (subsequent change reviewed administratively)	No. 93-1782 (D.D.C.)
Texas v. U.S.	Elected to appointed board for water district	03/09/94	Edwards Underground Water District, TX	06/01/95	Dismissed (subsequent change reviewed administratively)	No. 94-0465 (D.D.C.)

CASE TITLE	SUBJECT	DATE FILED	JURISDICTION	DATE OF DECISION	DECISION	CITATION OR CASE NUMBER
Bossier Parish School Board v. Reno	Redistricting	07/11/94	Bossier Parish School District, LA	11/02/95	Granted	907 F. Supp. 434, (D.D.C. 1995) rev'd, 520 U.S. 471 (1997)
				05/04/98	Granted	7 F. Supp. 2d 29, (D.D.C. 1998) aff'd, 528 U.S. 320 (2000)
Texas v. U.S.	Creation of 7 additional judicial positions (no objection to modification of existing court in Tarrant County	07/14/94	Fort Bend, Harris, Midland & Tarrant Counties, TX	07/10/95	Granted	No. 94-1529 (D.D.C.)
Baton Rouge and Parish of East Baton Rouge v. U.S.	19 annexations*	09/23/94	Baton Rouge, LA	06/23/95	Dismissed (no objection to change after administrative review)	No. 94-2048 (D.D.C.)
Arizona v. Reno	Creation of 4 additional judicial positions	09/26/94	Coconino and Navajo Counties, AZ	03/6/96	Granted (consent decree)	No. 94-2054 (D.D.C.)
New York v. U.S.	Creation of addition judicial positions to supreme court*	10/13/94	Bronx and Kings Counties, NY	12/22/94	Granted	874 F. Supp. 394, reconsideration denied, 880 F. Supp. 37 (D.D.C 1994)

CASE TITLE	SUBJECT	DATE FILED	JURISDICTION	DATE OF DECISION	DECISION	CITATION OR CASE NUMBER
Georgia v. Reno	Creation of 10 additional judicial positions	06/01/95	State	09/21/95	Dismissed (no objection to change after administrative review)	No. 95-1046 (D.D.C.)
Georgia v. Reno	Creation of 29 additional judicial positions	07/25/95	State	12/06/95	Dismissed (no objection to change after administrative review)	No. 95-1379 (D.D.C.)
City of Andrews v. Reno	Cumulative voting by plurality; length of terms; implementation schedule	08/07/95	Andrews, TX	01/29/96	Granted (consent decree)	No. 95-1477 (D.D.C.)
Alabama v. Reno	Creation and expansion of courts of criminal and civil appeals; expansion of state supreme court	02/20/96	State	03/25/96	Dismissed (Prior objection withdrawn)	No. 96-0316 (D.D.C.)
Baton Rouge and East Baton Rouge Parish v. U.S.	special procedures for conduct of referendum election ratifying creation of consolidated metropolitan council*	04/29/96	Baton Rouge, LA	07/15/96	Dismissed (no objection to change after administrative review)	No. 96-0987 (D.D.C.)
Texas v. U.S.	Temporary replacement of elected school boards*	06/07/96	State	03/17/97	Dismissed (not ripe)	No. 96-1274 (D.D.C.), aff'd, 523 U.S. 296 (1998)

CASE TITLE	SUBJECT	DATE FILED	JURISDICTION	DATE OF DECISION	DECISION	CITATION OR CASE NUMBER
Mississippi v. Reno	Annexation procedures	07/23/96	State	07/24/98	Dismissed (Objection withdrawn and no objection interposed to change after administrative review	No. 96-1711 (D.D.C.)
Louisiana v. U.S.	Annexations	02/04/97	Shreveport City Court, LA	12/01/97	Dismissed (Prior objection withdrawn upon change in method of election)	No. 97-0241 (D.D.C.)
Virginia v. Reno	Redistricting procedures	04/10/00	State	10/17/00	Dismissed (not ripe)	117 F. Supp. 2d 46, (D.D.C. 1900) aff'd mem., 531 U.S. 1062 (2001)
City of Zachary v. Reno	Creation of district; method of election	09/01/00	Zachary, LA	11/02/00	Dismissed (no objection to change after administrative review)	No. 00-12122 (D.D.C.)
Georgia v. Ashcroft	Redistricting (congressional and legislative)*	10/10/01	State	04/05/02 02/20/04	Denied (senate); Granted (congressional and house) Dismissed on remand	195 F. Supp. 2d 95 (D.D.C 2002); denial of declaratory judgment vacated and remanded 539 U.S. 431 (2003)
Louisiana House of Representatives v. Ashcroft	Redistricting (state house of representatives)*	01/14/02	State	05/21/03	Dismissed (subsequent change reviewed administratively)	No. 02-0062 (D.D.C.)

CASE TITLE	SUBJECT	DATE FILED	JURISDICTION	DATE OF DECISION	DECISION	CITATION OR CASE NUMBER
State of Florida v. Ashcroft	Redistricting (congressional) *	05/14/02	State	06/13/02	Dismissed (no objection interposed to the change after administrative review of the submission made by the governor)	No. 02-0941 (D.D.C.)
State of North Carolina Board of Elections v. Ashcroft	Redistricting (leglislative)*	06/13/02	State	08/02/02	Dismissed (no objection interposed to the change after administrative review of the submission made by the governor)	No. 1:02CV1174(D.D.C.)
State of North Carolina v. Ashcroft	Redistricting (legislative)*	11/26/03	State	04/01/04	Dismissed (no objection to the change after administrative review)	No. 1:03CV02477 (D.D.C.)

APPENDIX TO THE STATEMENT OF BRADLEY J. SCHLOZMAN: ATTORNEY GENERAL CERTIFICATIONS

AG Certifications

State	County	Date Certified	Last Coverage	Type of Election
ALABAMA	Autauga County	10/29/65		
	Barbour County	10/06/94	06/02/98	Primary
	Bullock County	11/06/78	06/28/94	Primary Runoff
	Chambers County	07/27/84	06/04/02	Primary
	Choctaw County	05/30/66	06/03/86	Primary
	Conecuh County	08/28/80	06/24/86	Primary Runoff
	Crenshaw County	12/29/86	01/06/87	Special
	Dallas County	08/09/65	06/02/98	Primary
	Elmore County	10/29/65		
	Greene County	10/29/65	11/05/74	General
	Hale county	08/09/65	06/04/02	Primary
	Jefferson County	01/20/66	08/28/90	Municipal Primary
	Lowndes County	08/09/65	11/07/00	General
	Marengo County	08/09/65	06/28/94	Primary Runoff
	Monroe County	08/31/84	06/07/88	Primary
	Montgomery County	09/29/65		
	Perry County	08/18/65	11/02/76	General
	Pickens County	09/01/78	01/20/87	Special Primary
	Russell County	09/25/78	09/07/82	Primary
	Sumter County	05/02/66	09/04/84	Primary
	Talladega County	10/31/74	11/05/74	General
	Wilcox County	08/18/65	11/02/82	General
ARIZONA	Apache County	10/31/86	11/02/04	General
	Navajo County	10/31/86	11/02/04	General
	Yuma County	02/26/91	11/02/04	General
GEORGIA	Baker County	11/04/68	09/04/84	Primary Runoff
	Baldwin County	08/07/84	11/06/84	General
	Brooks County	07/11/90	07/18/00	Primary
	Bulloch County	07/30/80	08/05/80	Primary
	Burke County	11/07/78	01/04/88	Special Municipal
	Butts County	08/25/82		
	Calhoun County	07/30/80	07/09/96	Primary
	Chattahoochee County	08/07/84	08/14/84	Primary
	Early County	07/30/80	08/05/80	Primary
	Hancock County	11/07/66	04/10/78	Municipal General
	Jefferson County	08/07/84	11/05/96	General
	Johnson County	07/30/80	11/05/96	General
	Lee County	03/23/67	09/11/68	Primary
	McIntosh County	07/20/92	01/26/93	Runoff
	Meriwether County	08/08/76	08/06/96	Primary Runoff
	Mitchell County	07/30/80	08/05/80	Primary
	Peach County	11/04/72	07/21/92	Primary
	Pike County	08/07/84	03/13/90	Special Mayoral
	Randolph County	08/10/92	08/10/04	Primary Runoff

	Talbot County	08/04/88	08/10/93	Special
	Taliaferro County	11/04/68	07/21/98	Primary
	Telfair County	07/30/80	08/09/88	Primary
	Terrell County	03/23/67	08/10/76	Primary
	Tift County	07/30/80	08/05/80	Primary
	Twiggs County	09/03/74	07/18/00	Primary
	Worth County	08/07/84	09/04/84	Primary Runoff
LOUISIANA	Bossier Parish	03/23/67		
	Caddo Parish	03/23/67		
	De Soto Parish	03/23/67	11/01/75	Primary
	East Carroll Parish	08/09/65	11/20/99	Runoff
	East Feliciana Parish	08/09/65	08/14/76	Primary
	Madison Parish	08/12/66	11/01/75	Primary
	Ouachita Parish	08/18/65	08/13/66	Primary
	Plaquemines Parish	08/09/65	10/27/79	Primary
	Sabine Parish	09/27/74	09/28/74	Runoff
	St. Helena Parish	08/16/72	10/22/83	Primary
	Tensas Parish	10/22/99	10/07/00	Municipal Primary
	West Feliciana Parish	10/29/65	11/06/71	Primary
MISSISSIPPI	Adams County	09/12/91	11/05/02	General
	Amite County	02/23/67	11/05/02	General
	Benton County	09/24/65	08/25/87	Primary Runoff
	Bolivar County	09/24/65	02/01/00	Special
	Carroll County	12/20/65	11/02/99	General
	Chickasaw County	08/02/99	11/02/99	General
	Claiborne County	04/12/66	11/03/87	General
	Clay County	09/24/65	11/04/80	General
	Coahoma County	09/24/65	05/15/01	Municipal Primary Runoff
	Copiah County	12/09/83	11/05/85	Special
	Covington County	08/06/79	08/24/99	Primary Runoff
	De Soto County	10/29/65	05/10/77	Municipal Primary
	Forrest County	06/01/67		
	Franklin County	03/23/67	03/12/68	Special Federal Runoff
	Greene County	08/06/79	11/06/79	General
	Grenada County	07/20/66	11/07/00	General
	Hinds County	10/29/65	11/04/86	General
	Golmes County	10/29/65	05/06/97	Primary
	Humphreys County	09/24/65	06/07/05	Municipal General
	Issaquena County	06/01/67	11/06/84	General
	Jasper County	04/12/66	10/08/91	Primary Runoff
	Jefferson County	10/29/65	08/20/85	Special Municipal
	Jefferson Davis County	08/18/65	08/25/87	Primary Runoff
	Jones County	08/18/65	11/02/04	General
	Kemper County	10/31/74	11/02/04	General
	Leake County	07/26/99	11/02/04	General
	Leflore County	08/09/65	11/05/96	General
	Lowndes County	08/19/83	11/05/96	General
	Madison County	08/09/65	05/20/97	Primary Runoff
	Marshall County	08/05/67	08/03/99	Primary
	Monroe County	09/12/91	05/04/04	Municipal General
	Neshoba County	10/29/65	11/02/04	General
	Newton County	12/20/65	11/02/04	General

	Noxubee County	04/12/66	11/04/03	General
	Oktibbeha County	03/23/67	11/05/96	General
	Pearl River County	04/29/74	05/21/85	Municipal Runoff
	Quitman County	10/29/80	08/24/99	Primary Runoff
	Rankin County	04/12/66	11/05/96	General
	Scott County	05/17/93	05/20/97	Primary Runoff
	Sharkey County	06/01/67	11/08/83	General
	Simpson County	12/20/65	08/08/67	Primary
	Sunflower County	04/29/67	01/15/02	Special Municipal Gneral
	Tallahatchie County	08/14/71	05/01/01	Municipal Primary
	Tunica County	10/31/75	11/02/99	General
	Walthall County	10/29/65	08/24/99	Primary Runoff
	Warren County	12/20/65	05/06/97	Primary
	Washington County	08/08/83	10/06/03	Municipal Primary
	Wilkinson County	08/05/67	02/12/02	Special Municipal General
	Winston County	04/12/66	11/02/04	General
	Yazoo County	10/28/71	11/03/87	General
NEW YORK	Bronx County	11/01/85	11/06/01	Municipal General
	Kings County	11/01/85	11/02/04	General
	New York County	11/01/85	11/02/04	General
NORTH CAROLINA	Edgecombe County	05/03/84	11/08/94	General
SOUTH CAROLINA	Bamberg County	10/10/84	02/12/85	Municipal
	Calhoun County	09/28/84	11/08/88	General
	Chester County	06/08/90	06/25/96	Primary Runoff
	Clarendon County	10/29/65	10/02/84	Primary
	Colleton County	10/10/84	10/11/84	Runoff
	Darlington County	11/06/78	11/07/78	General
	Dorchester County	10/29/65	12/11/02	Special Municipal
	Hampton County	10/10/84	10/11/84	Runoff
	Marion County	06/26/78	06/11/96	Primary
	Richland County	09/28/84	10/02/84	Primary
	Williamsburg County	09/28/84	06/25/96	Primary Runoff
TEXAS	Atascosa County	10/29/80	11/04/80	General
	Bee County	10/29/76	11/02/76	General
	Crockett County	08/11/78	08/12/78	Special Runoff
	Dallas County	04/05/84	11/02/04	General
	El Paso County	11/06/78	11/07/78	General
	Fort Bend County	04/28/76	05/01/76	Primary
	Frio County	10/29/76	04/14/92	Primary Runoff
	Galveston County	12/05/96	12/10/96	Federal Runoff
	Hidalgo County	11/04/88	11/08/88	General
	Jefferson County	12/05/96	12/10/96	Federal Runoff
	La Salle County	10/29/76	11/02/76	General
	Medina County	04/28/76	05/01/76	Primary
	Reeves County	05/05/78	06/03/78	Primary Runoff
	Titus County	11/01/02	11/05/02	General
	Uvalde County	04/28/76	05/01/76	Primary
	Victoria County	03/31/87	04/04/87	Municipal Primary
	Wilson County	04/28/76	05/01/76	Primary

Semi Annual Report of Cumulative Totals on Voting Rights Examining as of June 30, 2005

	Number of Voters Removed* During the Quarter	Total Number of Federally Registered Voters as of June 30, 2005
TOTAL, ALL	435	112,078
ALABAMA, ALL	74	50,566
Autuaga	0	1,172
Dallas	0	8,418
Elmore	0	1,792
Greene	0	1,639
Hale	0	2,769
Jefferson	74	13,990
Lowndes	0	1,976
Marengo	0	5,076
Montgomery	0	9,731
Perry	0	652
Sumter	0	25
Wilcox	0	3,326
LOUISIANA, ALL	115	12,289
Bossier	0	1,107
Caddo	73	2,013
DeSoto	0	1,298
E. Carroll	0	1,393
East Feliciana	0	1,183
Madison	2	471
Quachita	40	3,128
Plaquemines	0	1,634
West Feliciana	0	62
MISSISSIPPI, ALL	232	42,388
Amite	18	212
Benton	0	277
Bolivar	0	152
Carroll	0	836
Claiborne	0	773
Clay	94	1,067
Coahoma	23	3,044
DeSoto	0	446
Forrest	0	160
Franklin	0	47

Grenada	17	570
Hinds	0	12,879
Holmes	0	2,498
Humphreys	3	1,005
Issaquena	0	11
Jasper	0	614
Jefferson	0	638
Jefferson Davis	0	857
Jones	0	1,857
LeFlore	49	2,658
Madison	0	5,806
Marshall	0	78
Neshoba	5	304
Newton	0	362
Noxubee	0	199
Oktibbeha	14	244
Pearl River	0	176
Quitman	0	49
Rankin	0	1,061
Sharkey	0	361
Simpson	0	1,062
Sunflower	0	64
Tallahatchie	0	79
Walthall	0	649
Warren	9	1,166
Wilkenson	0	125
Winston	0	2
SOUTH CAROLINA, ALI	0	4,582
Clarendon	0	3,413
Dorchester	0	1,169
GEORGIA TOTAL	14	2,253
Butts	0	13
Lee	0	209
Screven	0	1,407
Terrell	14	624

*REMOVED: The cumulative count of formerly listed persons whose names were subsequently removed form the Federal list of registered vote The two most prominent reasons for removal have been ___ or relocation of the citizen to a residence outside the voting jurisdiction.

Source: Office of Personnel Management Voting Rights System

APPENDIX TO THE STATEMENT OF EDWARD BLUM: *WHOSE VOTES COUNT? AFFIRMATIVE ACTION AND MINORITY VOTING RIGHTS,* ABIGAIL THERNSTROM: EXECUTIVE STUDY AND CHAPTER 1

Testimony of Edward J. Blum

Project on Fair Representation

American Enterprise Institute

Before the U.S. House of Representatives

Judiciary Committee

Subcommittee on the Constitution

October 25, 2005

I am asking that Chapter 1 from Abigail Thernstrom's seminal work, *Whose Votes Count? Affirmative Action and Minority Voting Rights* (Harvard University Press) be included in the record accompanying my testimony because it illuminates the following points relevant to the question of reauthorizing the preclearance provision of the Voting Rights Act.

Executive Summary of Chapter 1
Whose Votes Count? Affirmative Action and Minority Voting Rights

• In 1966, in *South Carolina v. Katzenbach*, the Supreme Court signed off on extraordinary federal control over state and local electoral matters *only* because the entire act was meticulously designed for a clearly legitimate end—opening the polling booths to blacks in states with a record of egregious Fifteenth Amendment violations. Section 5 and other emergency provisions were passed, as Chief Justice Earl Warren said, in the context of the "unremitting and ingenious defiance of the Constitution." But, in recognition of their constitutionally questionable nature, these special provisions were expected to sunset in 1970.

• In 1965—hard as it is to believe today—the preclearance provision was barely discussed. Obstacles to registration and voting were the sole concern of those who framed the legislation. As Attorney General Katzenbach said at the congressional hearings, "The whole bill is really aimed at getting people registered." Every witness made that clear. And the point of preclearance was to reinforce the suspension of the literacy tests. Section 4 banned literacy tests in the covered jurisdictions—those southern states in which the emergency provisions applied. Section 5, preclearance, made sure the effect of that ban stuck. It was simply a prophylactic measure—a means of guarding against renewed efforts to keep blacks from the polls.

• The trigger that determined coverage by section 5 and other emergency provisions was devised to target precisely only those southern states known to have been deliberately depriving African Americans of their Fifteenth Amendment rights. The framers of the act took a well-established

statistical relationship between literacy tests and low voter turnout in the South to identify intentional disfranchisement. They knew that most southern literacy tests were fake, and that turnout below the 50 percent mark in 1964 could serve as good circumstantial evidence of their fraudulent use to keep blacks from the polls. A less accurate trigger would have raised serious constitutional questions.

• In 1965 the statistical formula precisely identified states whose abominable records justified draconian federal action to ensure voting rights. But that statistical trigger was twice updated, and turnout figures for 1968 and 1972 were added to the formula for coverage. Moreover, the connection to the use of fraudulent literacy tests disappeared, since all tests were banned nationwide. As a result, scattered counties outside the South with no history of Fifteenth Amendment violations came under coverage. For this reason, among others, section 5 is no longer indisputably constitutionally sound.

• The initial understanding of section 5 envisioned objections only to innovations involving registration and the mechanics of voting, but as black registration rose sharply, state legislators in Mississippi and elsewhere acted swiftly to reduce the impact of the new black vote. They passed laws allowing counties to shift from single-member districts (some of which would elect black officeholders) to at-large voting, which would allow a cohesive white majority to defeat black candidates. In response, in *Allen v. State Board of Elections* (1969), the Supreme Court redefined disfranchisement to include vote dilution. Clearly, the Court could not stand by while southern whites in covered states altered electoral rules to buttress white hegemony. But *Allen* was the opening wedge in a profound transformation of the act.

• A right to protection from action intended to minimize black power, once established, could not be easily contained. By acting to avert such rearguard measures, by prohibiting the adoption of county-wide voting and other electoral changes that threatened to rob black ballots of their expected worth, the Court had implicitly enlarged the definition of enfranchisement. Now there were "meaningful" and "meaningless" votes—votes that counted and those that did not. And once that distinction had been made, a meaningful vote was almost bound to become an entitlement.

• An alleged voting rights violation today is a districting plan that contains nine majority black districts when a tenth could be drawn. The question is thus: how much special protection from white competition are black candidates entitled to? When do black ballots "fully count." The phrase, itself, invites a definition which gives those ballots maximum weight, defined as officeholding; anything less suggests a compromised right. Yet maximum weight implies an entitlement to proportionate ethnic and racial representation—a concept that is no less constitutionally controversial with respect to legislative bodies than with reference to schools and places of employment.

• We have arrived at a point no one could have envisioned in 1965. The right to vote no longer means simply the right to enter a polling booth and pull the lever. Yet the issue retains a simply Fifteenth Amendment aura—an aura that is pure camouflage. But that camouflage cannot hide the fact that the emergency provisions of the Voting Rights Act, designed to enforce Fifteenth Amendment rights, no longer have the same indisputable constitutional legitimacy they once

possessed—especially because administrative channels are so ill-equipped to resolve basic matters of electoral equality. The point is unlikely to escape judicial notice if plaintiffs challenge another twenty-five year extension of section 5.

Abigail Thernstrom
WHOSE VOTES COUNT?
Affirmative Action and Minority Voting Rights

(Harvard University Press, 1987)

CHAPTER ONE: THE FIRST FIVE YEARS
(footnotes omitted)

The Voting Rights Act of 1965 had a simple aim: providing ballots for southern blacks. Within five years, in suits based on the statute, complex questions of electoral equality would arise, but certainly at the outset no one envisioned that turn of events. The extraordinary power which the legislation conferred on both courts and the Department of Justice, permitting an unprecedented intrusion of federal authority into local electoral affairs, was meant to deal with an extraordinary problem: continued black disfranchisement ninety-five years after the passage of the Fifteenth Amendment.

Judicial power would quickly come to be seen as a powerful tool to heighten the impact of the black vote. Yet, ironically, it was precisely the failure of courts to protect basic Fifteenth Amendment rights that prompted the passage of the Voting Rights Act. The 1957 Civil Rights Act had created a Civil Rights Division within the Department of Justice, and had given federal authorities new power to sue recalcitrant registrars and other local officials determined to keep blacks from the polls. Both the 1960 and 1964 Civil Rights acts had further enhanced that power. But such case-by-case adjudication proved arduous, expensive, and limited in impact. Preparation for a trial often required examining of hundreds of witnesses and scouring thousands of pages of registration records. In one case involving Montgomery, Alabama, for instance, the government introduced sixty-nine exhibits, one of which consisted of 10,000 documents in five filing cabinets.

The government was invariable rewarded in its efforts, winning every suit it brought. But only those counties most vulnerable to attack were sued, and victory was often neither swift nor complete. As John Doar, in charge of voting rights litigation under John F. Kennedy, later put it, the Justice Department "faced tough judges" (some of whom Kennedy had, himself, appointed)—tough not in the sense of rigorous or exacting, he meant, but eager to find for the defendants. Too often, access to public records was reluctantly conceded, trials were delayed, cases improperly dismissed, rulings inadequate, and enforcement half-hearted. Kennedy's Justice Department initiated fifty-seven suits. The result, as Doar described it in 1963, was to move "from no registration to token registration." He referred to areas targeted by federal activity. The primary concern was with the rural and small-town South—with, for instance, the twenty-two Alabama counties in which fewer than 10 percent of voting age blacks were registered, the four

heavily black Louisiana parishes with not a single black on the voter lists, the sixty-nine Mississippi counties with abysmal records of receptivity to black political participation.

In such strongholds of white supremacy, the Justice Department did not battle alone. As government attorneys prepared their lengthy and elaborate legal briefs--combing the voter rolls, compiling the demographic statistics, interviewing registrars and registrants—valiant civil rights volunteers simply tried to register blacks to vote. As attorneys got ready to take legal action, workers went door to door urging blacks to exercise their Fifteenth Amendment rights.

The strength of these volunteers' effort was unprecedented, yet it largely failed. Or rather it failed to enlarge substantially the ranks of black registered voters, but succeeded, by the violence of the resistance that it provoked, in finally convincing the nation that radical new legislation was needed. Certainly as important to the enactment of the Voting Rights Act as the frustrating experience of federal litigators were the murders of three civil rights works in Mississippi in the summer of 1964, the eruptions of violence in response to voter registration drives elsewhere, and the brutal assault by the police on the peaceful marchers from Selma to Montgomery, Alabama, in the spring of 1965.

In the view of many blacks today, the Voting Rights Act is the crowning achievement of the civil rights movement. Yet in the early 1960s, voter registration was not the highest priority for civil rights groups. The revolution instead got its start in the 1965 Montgomery bus boycott and the 1960 lunch counter sit-ins in Greensboro, North Carolina. The massive demonstration in Birmingham in 1963 was in response to discrimination in the downtown department stores and, again, at the lunch counters. Not until the march at Selma did voting rights become the focus.

In fact, the energy devoted to voter registration drives after 1962 was due, in great part, to pressure from the Kennedy administration pressure and interest by philanthropic foundations. Following the Freedom Rides in the spring of 1961, which had attempted to force the desegregation of interstate transportation facilities, Attorney General Robert Kennedy had met with representatives from several civil rights groups to urge greater involvement on their part in voter registration work. Holding out the prospect of money from private sources, Kennedy argued that agitation for the vote was likely both to encounter less immediate white resistance and to promise greater long-run social change. It was the key to every other right, he contended. "From participation in elections [would] flow...all of what they wanted to accomplish in education, housing, jobs, and public accommodation."

Nevertheless, not everyone in the movement was convinced that the Kennedys meant well. Many members of the Student Nonviolent Coordinating Committee (SNCC) were skeptical. "I felt that what they were trying to do was to kill the Movement, but to kill it by rechanneling its energies," one SNCC worker reported. These warriors in the racial backwaters of the South wanted to revolutionize the social order, and voter registration seemed unequal to the task. As, historian Claybourne Carson has written, an important faction within SNCC hoped to "free people's minds from the restraints of established order," and to create a world in which people would "not even have to do such things as vote or have leaders or officers." Others, less ambitious in their goals, viewed the concentration on voter registration as a concession to the forces for law and order in the lawless Jim Crow South.

In the end, a majority in the movement was persuaded to follow the electoral politics strategy, and under the umbrella of a new organization, the Voter Education Project,, a massive registration drive was launched. Even the most militant quickly realized that such work was not a retreat—that it offered plenty of opportunity to confront southern racists directly. Soon after the June, 1961 meeting at which Robert Kennedy had pressed civil rights organizers to place greater emphasis on enfranchisement, SNCC began a voter registration drive in McComb, Mississippi and surrounding counties. Led by Robert Moses, a black field secretary who had quit his job as a private-school mathematics teacher in New York to work full time on voter registration in the South, the registration effort proved enlightening. Between the middle of August and the end of October, Moses was attacked and beaten by a cousin of the sheriff; a co-worker was ordered out of a registrar's office at gunpoint and then hit with a pistol; a sympathetic black was murdered by a state representative; another black who asked for Justice Department protection to testify at the inquest was beaten (and three years later killed); a white activist's eye was gouged; and, finally, twelve SNCC workers and local supporters were fined and sentenced to substantial terms in jail. Those in McComb that summer discovered that voter registration work certainly signified no surrender, and gave those eager to display their courage ample opportunity. As one participant, answering those still agitating for the direct action such as sit-ins represented, "If you went into Mississippi and talked about voter registration they're going to hit you on the side of the head and that's about as direct as you can get."

Of course the walls of segregation and discrimination were not going to come tumbling down simply because blacks could vote, as Kennedy and King had hoped. But enfranchisement did portend massive change; southern whites who had so carefully erected and guarded the barriers to suffrage had always understood that. "Right or wrong, we don't aim to let them vote. We just don't aim to let 'em vote," a Mississippi Democrat told V.O. Key in the mid-1940s. It was a matter not of principle but of power. As Maynard Jackson, Atlanta's first black mayor, recently remarked, the Talmadges, the Stennises, the Bilbos, the Thurmonds all knew that once blacks got their Fifteenth Amendment rights no white supremacist would hold office securely.

This, then, was the context in which the march at Selma took place and the Voting Rights Act soon after was passed. The civil rights community had become more or less united in making black enfranchisement its highest priority, and that determination could only have been strengthened by the passage of the Civil Rights Act of 1964. That measure provided extensive protection against discrimination in the areas of public accommodation, employment, and education, but it left basic voting rights—elementary access to the ballot—at the mercy of local courts. The limited receptivity of many southern judges to voting rights suits was clear, yet civil rights activists could do little on their own; the voter registration drives had had no more impact than the litigation. Progress had been meager; change, incremental. Federal help was obviously needed, but in a new form. And that is precisely what the Voting Rights Act provided.

Lyndon Johnson, in 1965, called for the "goddamnedest, toughest, voting rights bill" that his staff could devise. And he got it. Critics and supporters alike agreed that it was "radical." A 1972 report calling for more rigorous voting rights enforcement described the act's provisions as

"harsh," but necessarily so. Its remedies were characterized as "stringent" by the Supreme Court, and the assistant attorney general for civil rights readily acknowledged in 1975 that it was "unusual" legislation.

The "usual" legislation, however, had failed to break the usual pattern of black disfranchisement. Voting rights litigators in the South in the early 1960s had learned several lessons. The first concerned the literacy test. "No matter from what direction one looks at it," V.O. Key had written in 1949, "the Southern literacy test is a fraud and nothing more." It was no less a fraud in 1965. In the 1960s, southern registrars were observed testing black applicants on such matters as the number of bubbles in a soap bar, the news contained in a copy of the *Peking Daily*, the meaning of obscure passages in state constitutions, and the definition of such terms as habeas corpus. By contrast, even illiterate whites were being registered. Booker T. Washington had believed that "brains, property, and character" would "settle the question of civil rights," but eighty years after the founding of Tuskegee Institute blacks with brains, property, and character in the city of Tuskegee still found themselves unable to demonstrate their literacy. "If a fella makes a mistake on his questionnaire, I'm not gonna discriminate in his favor just because he's got a Ph.D.," the chairman of the Board of Registrars righteously maintained.

Government attorneys trying voting rights cases in federal district courts had struggled with the question of a proper remedy for the discriminatory use of literacy tests. One option was to insist upon the fair administration of such tests: *all* illiterate applicants (black and white) would fail, and all those who could read and write would pass. Yet often these tests could not be objectively scored. For example, potential registrants would be asked to interpret a provision in the state constitution to the satisfaction of the registrar, when no definition of "satisfactory" had been—or could be—provided. In any case, the consequence of suddenly administering a test to blacks that whites had never been asked to take was unacceptable.

The alternative to permitting a color-blind literacy and "understanding" test was what attorneys called a true "freeze" order: do not freeze the announced registration test, they said, but the one to which whites had been actually subjected. That is, no change should be allowed in the real test that whites took. Since no literacy test had, in fact, been used to screen whites, none should be used for blacks. This, then, was the first conclusion dictated by trial experience in the early 1960s: to eliminate the literacy test entirely was the proper remedy for its misuse.

Federal attorneys drew three further lessons. First, southern judges could not be trusted; federal district courts in the immediate locality were not the appropriate agency to enforce voting rights. Second, questions of disfranchisement should not, in fact, be litigated at all. To prove the obvious was both expensive and time-consuming, and victories were too often transient or incomplete. Finally, banishing literacy tests might not be enough. Unless preventative steps were taken, old methods of disfranchisement might simply be replaced by new ones, and the tedious and prolonged legal process would begin again.

These were the lessons that shaped the Voting Rights Act—that made it the "tough" legislation that President Johnson wanted. What the litigators learned in the field, the framers of the act wrote into law. In place of the extended and complex judicial process traditionally used to establish violations of voting rights, the architects of the statute substituted a simple statistical

rule of thumb. They required no judicial findings. Instead, knowing literacy tests to be the chief means of disfranchising southern blacks, and using voter registration and turnout figures, they devised a statistical test to identify the discriminatory use of such tests. They took well-established relationship between the impact of black disfranchisement on the general level of political participation in the heavily black southern states, on the one hand, and the fraudulent use of literacy tests, on the other, and used the first to identify the second. The statistical test permitted the finding of vote denial by a simple formula, eliminating the need to ferret out Fifteenth Amendment violations in an unmanageably large number of counties in states with abominable records with respect to black voting rights.

The statute thus identified a voting rights violation wherever total voter registration or turnout in the presidential election of 1964 fell below 50 percent and a literacy test was used to screen potential registrants. A state or county which had employed such a test in November 1964, and in which less than half the voting-age population (black *and* white) had cast ballots, was assumed to have engaged in electoral discrimination, with the burden on the jurisdiction to prove otherwise.

From the inferred presence of constitutional violations, several consequences followed. In "covered" jurisdictions, literacy tests were suspended, initially for five years. Federal registrars ("examiners") and election observers could be dispatched to those areas whenever necessary. Moreover, those states and counties could institute no new "voting qualification or prerequisite to voting" without "preclearance" (approval) by the Attorney General or the District Court of the District of Columbia. No southern court was given jurisdiction. As the chairman of the House Judiciary Committee later put it, the law provided "an arsenal of readily available and effective remedies."

Why the figure of 50 percent? Because those who wrote the legislation knew the states they wanted to "cover" and, by a process of trial and error, determined the participation level that would single them out. Those central, temporary provisions of the 1965 Act—suspension of the literacy test, chief among them—applied to six southern states in their entirety, a seventh in substantial part, and only scattered counties elsewhere. And why not a outright ban on all literacy tests, without the intervening, indirect test for Fifteenth Amendment violations? Because it was assumed that such a ban would not survive a constitutional challenge. As recently as 1959, the right of states to screen potential registrants for their ability to read and write had, in principle, been upheld.

The impact of the act's passage was almost instantaneous. The history of Dallas County, Alabama, of which Selma is the seat, is illustrative. Prior to the bloody days of early 1965, when blacks and whites risked their lives marching for voting rights, the Justice Department had engaged in four years of litigation. Twice the federal court had found widespread Fifteenth Amendment violations, and at first glance it might seem that unmistakable progress had resulted: black registration had increased twenty-fold, from 16 to 383. But there were approximately *fifteen thousand* blacks of voting age in that majority-black county. On August 6 the Voting Rights Act became law, and by August 14 a federal examiner (registrar) had listed another 381 blacks. The effort of four years had been duplicated in a single week. By November nearly 8000 black applicants had been enrolled. In Alabama as a whole an estimated 19.3 percent of blacks

were registered as of March, 1965; the figure rose to 51.6 percent by September, 1967. Impressive change also took place in Georgia, Louisiana, South Carolina, and Virginia. North Carolina, which began with relatively high black registration (46.8 percent), naturally experienced fewer gains. At the other extreme, Mississippi took off from a low point of 6.7 percent, but two years later had the highest percentage of black registered voters (59.8 percent) anywhere in the South.

What the Voting Rights Act accomplished—black enfranchisement—was precisely what it aimed to do. Every section of the statute must be viewed in light of that purpose. Attorney General Katzenbach made that goal very clear on the opening day of the congressional hearings held prior to the passage of the legislation. "Our concern today is to enlarge representative government," he said. "It is to increase the number of citizens who can vote." The point was reiterated throughout his testimony. "The whole bill is really aimed at getting people registered," he explained. Other witnesses did not even mention the purpose of the bill, viewing it as obvious and beyond discussion. Instead, they poured forth in detail the continuing obstacles to rudimentary electoral participation. Every advocate had the same thing in mind—realizing the promise of the Fifteenth Amendment almost one hundred years after its passage.

Although the Voting Rights Act was permanent legislation, its central provisions were temporary. For instance, the statute permanently protected all citizens from procedures which denied the right to vote on account of race or color (the Fifteenth Amendment guarantee). On the other hand, those sections that banned literacy tests, required the "preclearance" of every new "voting qualification or prerequisite to voting," and made available federal examiners and observers were enacted as short-term, "emergency" measures. Assuming powers traditionally left in local hands, these provisions consequently had an expected life of only five years. Indeed, had the "special" provisions also been proposed on a permanent basis, the law would not have passed. As it was, sponsors of the bill had originally hoped for a decade, but were forced to settle for half.

In 1965, that is, ten years seemed an unacceptably long time to permit such extraordinary federal control in much of the South over matters of suffrage. The powers given to the Justice Department—which later became much greater than anyone originally contemplated—have become so much a part of our political and legal landscape that it is hard to recognize how remarkable they are. It was clear enough at the time, however. In a 1966 decision upholding the law, Supreme Court Chief Justice Earl Warren acknowledged that its "constitutional propriety" had to be understood in context, "with reference to the historical experience which it reflect[ed]...[the] insidious and pervasive evil which had been perpetuated in certain parts of our country through unremitting and ingenious defiance of the Constitution." As it was, the doubts of the great liberal Justice, Hugo Black, were not assuaged. "Section 5 [the preclearance provision]," he said, "by providing that some of the States cannot pass State laws or adopt State constitutional amendments without first being compelled to beg federal authorities to approve their policies, so distorts our constitutional structure of government as to render any distinction drawn in the Constitution between State and Federal power almost meaningless."

Justice Black was not alone, of course, in finding portions of the act objectionable. In fact, most Republican members of the House Judiciary Committee had preferred an alternative bill. They complained that "fair and effective enforcement of the 15th amendment call[ed] for precise identification of offenders, not the indiscriminate scatter-gun technique evidenced in the 50 percent test." That test, they said, "would engulf whole States in a tidal wave of Federal control of the election process, even though many of the counties or parishes within that State may be acknowledged by all to be absolutely free of racial discrimination in voting," they said. These Republican views were shared by the *Wall Street Journal*. "To play with complicated formulas, to measure justice by percentages, and to aim punitive laws at some States," it said, "not only violates both the spirit and letter of the Constitution, but buries the real moral question in sophistry."

Southerners, of course, saw the ghost of Reconstruction. They, too, labeled the act punitive legislation, aimed at the South, without regard for the guilt or innocence of particular localities. Representative William M. Tuck from Virginia argued that not even the U.S. Commission on Civil Rights had found discrimination in his state. Yet Virginia, along with Mississippi, was required "to prostrate itself before a three-judge court in a foreign jurisdiction and establish its innocence." The reference was to the "bailout" provision, whereby jurisdictions could escape "coverage" by obtaining from the D. C. district court a declaratory judgment that in the previous five years the literacy test they had used had not actually been employed to deny or abridge the right to vote on account of race. "Do you think it is a fair system of justice which compels people to travel 250 or 1,000 or 3,000 miles in order to gain access to a court of justice,?" Senator Sam Ervin asked in the Senate hearings prior to the passage of the act. It was a "studied insult" to the people and the "honorable judges" of the South, Tuck agreed, made even worse by the permission given to "Federal personnel to overrun areas of a State or subdivision as intimidating symbols of Federal power."

The charges were not persuasive. The act was a blunt and harsh instrument, but in 1965 the South was in no position to protest its passage. It came to the argument with exceedingly dirty hands. And all attempts to secure Fifteenth Amendment rights by more orthodox means had failed. In retrospect, the most notable aspect of the debate is not the South's predicament—having the weight of constitutional tradition on its side, yet being so clearly in the wrong. Most striking is the fact that critics ignored the one provision that should have caused alarm and focused entirely on those that would soon gain wide acceptance. The elimination of the literacy test throughout most of the South, the provision for federal examiners and observers, and, to a lesser extent, the exclusive reliance on the D.C. district court—these provisions, so controversial in 1965, were hardly matters of discussion five years later. Only a few Southerners (Senators Ervin and Thurmond, most notably) continued to resent their applicability to the South alone. But the "preclearance" requirement that quickly came to occupy center stage—the demand that covered jurisdictions check with federal authorities before altering any "voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting"—was hardly noticed in the initial debate.

The reason is clear. In 1965, the preclearance provision (section 5) was seen as nothing more than a corollary of section 4—the latter banning literacy tests, the former making sure that the effect of that ban stuck. The demand that federal authorities preclear any new voting procedure in counties and states in which literacy tests had been suspended had an unambiguous and limited aim: guarding against renewed disfranchisement, the use of the back door once the front one was blocked.

The ingenuity of racists had kept the litigators attempting to secure the basic franchise always running and always behind, and those who shaped the Voting Rights Act could not be sure that eliminating the literacy test would do the trick. Although federal examiners could be assigned to register blacks where local officials were recalcitrant, it was hoped that the use of such registrars could be kept to a minimum. In any case, new regulations could keep blacks from actually voting. Of course, such regulation could be overturned judicially, but when whole purpose of the act was too eliminate the need for an army of federal litigators doing battle in every southern district court.

References to section 5, the preclearance provision, were sparse in the 1965 congressional hearings, but Attorney General Katzenbach did briefly explain it. "Our experience in the areas that would be covered by this bill," he said, "has been such as to indicate frequently on the part of state legislatures a desire in a sense to outguess the courts of the United States or even to outguess the Congress of the United States." That is, the courts and Congress could ban familiar disfranchising devices only to confront novel ones devised by southern states bent on evading the law. But for such changes in voting procedure to be rejected, Katzenbach went on, they would have to have the effect of denying the rights guaranteed by the Fifteenth Amendment. And numerous witnesses at the hearings reassured their audience that those rights, which it was the entire purpose of the act to secure, were expected to be narrowly defined.

Thus Roy Wilkins, executive director of the NAACP, spoke of the need to protect the citizen "from the beginning of the registration process until his vote has been cast and counted." New York Representative William F. Ryan referred to the Act as "eliminating discrimination at the ballot box." Another New York congressman, Jonathan Bingham, urged legislation that would reach "every essential activity affecting the vote"--political party meetings, councils, conventions, and referendums, as well as primaries and general elections. Never during the hearings was "every essential activity affecting the vote" defined to include redistricting, annexations, or changes to at-large voting. No one could imagine he future scrutiny to which such changes would be subjected under section 5.

Two points, then, emerged from the House and Senate Judiciary Committee hearings on the original Voting Rights Act. First, preclearance was just one of several measures intended to reinforce the ban on literacy tests contained in section 4; second, as such, it was seen as relatively unimportant, drawing little attention. The Senate Committee report, in fact, fails even to mention section 5 in its summary of the bill's key provisions, and the House Report gives it only a cursory and unilluminating glance. As the distinguished civil rights attorney Joseph Rauh put it, the provision was included in the statute "to stop ways around voting legislation...simply [as] self-defense." Congress was well aware that southern states were adept at the fine art of

circumvention. Banishing literacy tests, it was feared, might not be sufficient; new devices could be created with the same impact as old ones, and the vote could be blocked anew.

The initial understanding of section 5 thus envisioned objections only to innovations involving registration and the mechanics of voting. Quite suddenly, however, a much broader view emerged—one that allowed the Department of Justice to review annexations, new district lines, and other changes affecting minority voting strength. The turning point can be precisely dated—March 3, 1969, when the Supreme Court handed down its decision in *Allen v. Board of Elections*. Before *Allen* one district court opinion had suggested that, under section 5, extending the terms of office for white incumbents was a change that required federal approval. And South Carolina, most consistently, did submit some preclearance requests for newly drawn district and municipal boundaries, as well as for newly instituted at-large and other methods of voting. But these legislative initiatives had never met with any objection from the Department of Justice.

The picture changed overnight. Within three months of the decision in *Allen*— by the time Congress began hearings on the first extension of the act's temporary provisions—the central importance of section 5 was well established. Preclearance protected blacks not only against obvious disfranchising devices, but also against those which in more subtle ways "diluted" the impact of their vote.

Allen was actually a consolidation of four cases. The most important involved a 1966 amendment to Mississippi law that allowed counties to replace district with at-large voting in the election of local supervisors (commissioners). Were such amendments voting "practices" or "procedures" and, as such, subject to the preclearance requirement of section 5?

Given the magnitude of the question, Chief Justice Warren disposed of it with striking ease. "The Voting Rights Act was aimed," he said, "at the subtle, as well as the obvious, state regulations which would have the effect of denying citizens their right to vote because of race." In the 1965 hearings the assistant attorney general for civil rights had flatly stated that "the problem that the bill was aimed at was the problem of registration." In Chief Justice Warren's view, however, more important were statements such as, "There are an awful lot of things that could be started for purposes of evading the 15th amendment if there is a desire to do so." The reference to an "awful lot of things," the Chief Justice argued, was incompatible with a narrow definition of voting practices and procedures. And it was clear, he went on, "that the right to vote can be affected by a *dilution* of voting power as well as by an absolute prohibition on casting a ballot. Voters who are members of a racial minority might well be in the majority in one district, but in a decided minority in the county as a whole. This type of change could therefore nullify their ability to elect the candidate of their choice just as would prohibiting some of them from voting."

Chief Justice Warren's reading of legislative history showed considerable ingenuity; the hearings nowhere betray any concern with changes which affected not access to the ballot, but the weight of the ballots cast. Nonetheless his central point, though considerably overstated, did have merit. The adoption of at-large voting did not necessarily "nullify" the ability of black voters "to elect the candidate of their choice; rarely would county-wide or city-wide elections have the *same* impact as a fraudulent literacy test—leaving blacks disfranchised despite their

access to the polling booth. But they might. The setting would have to be one in which white voters consistently voted as a bloc against candidates (white or black) preferred by blacks. Elections would then amount to a racial census, with the result that blacks in a majority-white jurisdiction would have nothing to lose by remaining home on election day. The breakdown of registrants by race would determine the outcome. But such white solidarity in the face of black enfranchisement is seldom permanent; blacks become a powerful swing vote when white candidates begin to compete. A substantial black electorate in an at-large setting is unlikely to remain indefinitely without influence—truly without reason to register and vote.

Yet the indefinite future was clearly not of immediate concern to Mississippi legislators in 1966. As the number of registered blacks climbed sharply, state representatives had acted swiftly to amend state law to reduce the impact of the new voters. According to the U.S. Commission on Civil Rights, in 1966 at least thirty bills were introduced in regular and special legislative sessions, and twelve were passed introducing substantial alterations in the state's election laws. Among them was the bill at the heart of *Allen*, giving county boards of supervisors the option of providing for the at-large election of their members. The bill had been sponsored almost entirely by representatives who came from counties with either potential black majorities or at least one majority black district. In theory, of course, in counties where blacks were a majority, county-wide voting could enable them to make a sweep of legislative seats. But the whites who initiated the legislative move were counting on a poor black turnout (and thus a white majority) and bloc voting along racial lines to ensure white control for some time to come.

In an eloquent dissent in *Allen*, Justice Harlan argued that section 5 could only be interpreted to reach such ill-disguised, racially biased action if sections 4 and 5 were viewed as independent provisions. Enfranchisement, the majority opinion implied, had one meaning in one section, another in the other. Section 4 did not ban procedures which "diluted" the black vote, only those which kept blacks from the polls. Yet after *Allen* federal authorities under section 5 could prohibit the *introduction* of new methods of voting (such as at-large elections), although those same methods were not considered disfranchising by the definition contained in section 4.

The two provisions, Justice Harlan wrote, were "clearly designed to march in lock-step...." The purpose of preclearance (section 5) was not "to implement new substantive policies but...to assure the effectiveness of the dramatic step that Congress had taken in § 4." Enforcement and reinforcement--these were the inseparable goals of the two, interlocked provisions. Thus, when the need for section 4 expired, when the ban on literacy tests terminated, the protection provided by section 5 should also end. "As soon as a State regains the right to apply a literacy test or similar 'device' under § 4, it also escapes the commands of § 5."

Harlan's basic point is incontrovertible: as a result of *Allen* these two provisions, envisioned as inseparable, were now separated by distinct definitions of enfranchisement. Yet, Mississippi had unmistakably attempted to avert a likely consequence of black enfranchisement in existing majority-black single-member districts: the transfer of some public offices from white hands to black. Basic enfranchisement had been the sole goal of the statute, but confronted with such a bald maneuver, the Court could hardly refuse to act. Section 5, the preclearance provision,

had been envisioned as a prophylactic device to prevent backsliding, and Mississippi had clearly tried to pull blacks back from the gains they had made.

Nevertheless, *Allen* marked a radical change in the meaning of the act: the majority opinion had found a Fourteenth Amendment right to protection from vote dilution in a statute that rested unequivocally on the Fifteenth Amendment. As Justice Harlan pointed out, and Chief Justice Warren acknowledged, the decision in *Allen* adopted "the reapportionment cases' expansive concept of voting...." It adopted, that is, that concern with the *weight* of the ballots cast that was at the heart of the one-person, one-vote (Fourteenth Amendment) decisions. Thus the door was opened to unprecedented federal involvement in local electoral matters. The reach of federal authority had been quite restricted as long as its limit was set by the boundaries of section 4. New election procedures not already prohibited by section 4, but nevertheless violating basic Fifteenth Amendment rights, could not be instituted. This had initially been the power of federal authorities under section 5 in its entirely: to block the introduction of new devices that kept blacks from the polls, and to require continued adherence to pre-existing rules—in other words, to force a return to abandoned procedures.

That power was greatly expanded by *Allen*. As I suggested I the Introduction, if there were now votes that "counted," and those that did not, then the former had obviously become a right: blacks casting "meaningless" ballots were certainly entitled to relief. But when were ballots "meaningful"? *Allen* forced an answer. For instance, proposed districting plans and annexations, for instance—both "voting" procedures, and, as such, subject to preclearance—cannot simply be vetoed by federal authorities. If the C.C. court (or the Department of Justice as its surrogate) objects to redistricting in the wake of a decennial census, the jurisdiction cannot in response simply reinstate the earlier, now malapportioned plan. New districts that conform to the one-person, one-vote standard must be devised. And federal authorities must define racial equity—the point at which black ballots "fully" count.

Likewise, an annexation may be judged discriminatory in impact if more white voters than black have been added to the city rolls. Yet neither the D.C. court nor the Supreme Court on appeal has sanctioned forcing financially squeezed cities to return to their circumscribed, preannexation boundaries. An alternative remedy must be formulated—one that meets federal standards of racial fairness. The Justice Department must thus both identify the objectionable and specify the acceptable. In a suggested districting scheme, are black ballots "fully meaningful" if there are only six majority-black districts when a seventh can be drawn? The purpose of preclearance, Justice Harlan had argued, was not "to implement new substantive policies." But nothing short of a substantive policy would answer the question that redistricting and other proposals submitted for federal review posed after *Allen*. It was, as Harlan put it, "a revolutionary innovation in American government that [went] far beyond that which was accomplished by § 4."

The Department of Justice and the D.C. district court, alone, have the authority to "preclear" proposed changes in electoral procedure, but their freedom to restructure local arrangements is not entirely unrestrained. To begin with, federal action depends upon local action. That is, an at-large method of voting is invulnerable to attack unless it is either newly proposed or has acquired new meaning as a consequence of a change in the racial balance of a

city following an annexation. Districting, however, is never stable; plans must be altered to meet the one-person, one-vote standard after every decennial census. Thus every ten years in "covered" jurisdictions local redistricting triggers federal oversight.

The second constraint upon federal authority is less restrictive: there must be some evidence that the proposed change could be interpreted to "deny or abridge the right to vote on account of race or color." Not all annexations, all new district lines, or all newly instituted at-large systems of voting qualify as potentially discriminatory. But the burden is on the jurisdiction to prove an absence of wrongdoing; if the D.C. court or the Attorney General *suspects* the presence of discrimination, an objection will be lodged.

When is the introduction of an at-large or other method of election a violation of black voting rights? The freedom of federal authorities to define the condition of vote "dilution" was greatly enhanced by the wording of section 5, which permits preclearance of those electoral practices and procedures that "do not have the purpose and will not have the effect" of denying or abridging the right to vote on account of race. In 1965, the reference to discriminatory effect was innocuous and thus unnoticed. The framers and sponsors of the act hoped to eliminate every device whose impact was to keep southern blacks from the polls—whatever its stated purpose. And, in the context, "effect" and "purpose" were close to interchangeable terms; the former was simply circumstantial evidence of the latter. That is, when the question was the legality of a recent alteration in voting procedure in a jurisdiction known to have had a long history of Fifteenth Amendment violations, the effect of the alteration was assumed to suggest strongly its purpose. The adverse impact of a sudden change in rules involving the franchise was viewed as a signal of improper motive when that change took place in the South and affected newly enfranchised blacks.

Once changes such as annexations and redistrictings were covered by the preclearance provision, however, "effect" was released from its intimate connection with "purpose." When a municipality annexes a suburban area, it may add more white voters than black to the city's voting rolls, but such an effect is not necessarily a clue to its purpose. The Court's decision in *Allen* suddenly applied the prohibition of section 5 to all changes that might have a disparate racial impact, whether intended or not. A districting plan that was racially neutral in intent could nevertheless be found discriminatory in effect.

Allen was crucial in the evolution of the Voting Rights Act from the first truly effective vehicle for southern black enfranchisement to a means by which political power is redistributed among blacks, whites, and (since 1975) Hispanics. Ostensibly, the decision only involved the question of coverage—what sorts of changes qualify as alterations in voting "practice or procedure." But questions of coverage, disfranchisement (or "dilution"), and federal power are inseparable. Once the area of scrutiny is expanded, both the definition of enfranchisement and the power of the federal government to insist on methods of voting allegedly in the interest of minority voters become enlarged.

Allen v. Board of Elections began the process by which the Voting Rights Act was reshaped into an instrument for affirmative action in the electoral sphere. But the impact of the decision would have been limited without two other developments: repeated extensions of the "special" (temporary) provisions of the act by Congress, and a key judicial ruling, *Gaston County, North Carolina v. United States*, which was decided (like *Allen*) in 1969. *Gaston* closed the door to escape from the act for southern states and counties.

Section 4 had suspended literacy tests wherever turnout in the presidential election of 1964 was under 50 percent, but jurisdictions could sue for release from coverage on the ground that no test had been employed for discriminatory ends in the preceding five years. In 1968 Gaston County, North Carolina, went to court. Six years earlier, the county had replaced its traditional oral test with a written one, and had begun a well- publicized process of re-registering all voters. The D.C district court (with sole authority to hear "bailout" suits) did not question either the new test's impartiality or the sincerity of the county's effort to reach black voters.

The southern setting, of course, made the test suspect, but although the Voting Rights Act was clearly aimed at the South, it did permit particular localities to prove themselves exceptions to the general rule of southern racism, and Gaston County believed that it qualified. The court, however, turned the county's petition down, finding the test to be discriminatory not in purpose but in effect. Until 1965 the local schools had been segregated, creating the unequal educational opportunity that, according to Judge Skelly Wright, left blacks less prepared to pass a literacy test. In other words, such a test penalized blacks for an inadequacy imposed by the state. The opinion was a variation on a familiar theme: when opportunities have not been equal, meritocratic systems don't work. Gaston County had been attempting to administer a test of merit in a context of unequal educational opportunity.

Did inequality of educational opportunity in fact account for black illiteracy? A concurring opinion argued that blacks were disproportionately unable to read and write because they went to work rather than staying in school; even the education provided by segregated schools would have enabled blacks to pass Gaston County's very simple test. That argument failed to persuade the Supreme Court, to which the country subsequently appealed. The burden was on the county to prove an absence of discriminatory effect, and that burden had not been met, Justice Harlan wrote for the majority. Judged by such measures as teacher training, facilities, and resources, black schools in the county prior to 1965 had clearly been inferior. And, in Harlan's words, those "inferior Negro schools provided many of [the county's] Negro residents with a subliterate education, and gave many others little inducement to enter or remain in school."

Gaston labeled the literacy test—however fairly administered—a disfranchising device for southern blacks. The Voting Rights Act, as initially conceived, had maintained the traditional distinction between the use of a device to deny or abridge Fifteenth Amendment rights and the normal exercise of a community's constitutionally sanctioned authority to set standards for voting. The statute assumed that potential registrants could still be screened for literacy, if not race. The North Carolina decision, however, collapsed that distinction. No evidence presented by a covered jurisdiction could prove its level of voter turnout unconnected to its use of a literacy test. There was no way, that is, of demonstrating that the statistical rule of thumb at the heart of

the Act had been inappropriately applied in a particular case, that although total voter turnout had not reached 50 percent, blacks had not been kept from the polls. Gaston thus heightened the significance of Allen. A jurisdiction, once "covered," remained so. And coverage meant close federal scrutiny of every change in the method of election, from the relocation of a polling place to a districting or annexation decision.

In part this chapter has attempted to describe the central features of the Voting Rights Act, to convey a sense of the setting in which it grew, and thus to explain its distinctive design. In part, however, it has introduced an argument that I will develop at length as the book continues. The statute was, by all accounts, radical. The architects of the Constitution had left matters of suffrage almost entirely in state hands, although subsequent amendments had prohibited a poll tax and denial or abridgment of the right to vote on account of race, gender, or age (after eighteen). In enforcing the Fifteenth Amendment, the Voting Rights Act broke with constitutional tradition. It established the presence of constitutional violations not on the basis of comprehensive judicial findings, but by the use of a statistical rule of thumb, and to an unprecedented degree, it placed local electoral affairs in federal hands. Covered jurisdictions were subject to a stringent set of remedies, often enforced by the Department of Justice, to which broad administrative discretion had been granted. This was emergency legislation, necessitated by the persistent and egregious infringement of basic rights. Its sole concern was simple enfranchisement—ballots for southern blacks. And that limited aim, to which the Constitution was unequivocally committed, legitimized the drastic nature of its central provisions.

The act was structured to deal with one kind of question, but after 1969 quite another kind was raised. Preclearance, a barely noticed provision in 1965, permitted the Department of Justice to halt renewed efforts to proscribe the exercise basic Fifteenth Amendment rights; it allowed swift administrative relief for obvious constitutional violations. Attorneys in the Civil Rights Division were expected to confront a straightforward question: will the proposed change in voting procedure keep blacks from the polls? But after the decision in *Allen*, the questions were no longer so simple. The decision was correct, but, as I will subsequently argue, the consequences troubling. The statute was not designed for the purpose to which it would be put—resolving through administrative channels basic questions of electoral equality, determining when ballots "fully" count. A statute is not carved in stone, and old tools can be used for new purposes. But the revised aim must be legitimate, the tools appropriate to the task at hand.

The decision in *Allen* was both correct and inevitable. Mississippi, while providing the immediate catalyst, was not alone in attempting to soften the impact of the law. In addition, the meaning of enfranchisement was changing in constitutional cases and likely to change in statutory ones as well. In the 1965 statute, the right to vote meant the right to register and cast a ballot, but already by that year a Fourteenth Amendment case had raised the issue of protecting minority citizens from electoral arrangements that diluted the impact of their votes. The question, I will argue in Chapter 4, logically followed from the one-person, one-vote decisions, with their guarantee of "fair and effective participation." By 1969, in fact, the notion that ballots should fully count, that participation should be "fair and effective" was permeating other institutions too. For instance, the Democratic Party, had altered its rules for the selection of delegates

following its 1968 convention. A commission chaired by George McGovern called upon party officials to take "affirmative steps to encourage minority group participation, including representation of minority groups on the national convention delegation in reasonable relationship to the group's presence in the population of the State." That recommendation became party policy.

There is a further point. While southern whites had feared that their world would crumble once blacks could freely go to the polls, many civil rights activists were skeptical that votes alone could shake the pillars of the racist status quo. Their laudable goal had been the radical transformation of relations between the races—true equality—and although the movement subsequently changed, that commitment remained. In most places black enfranchisement would, by itself, bring black power—black political influence—but not necessarily blacks *in* power. Yet holding public office came to be viewed as critical to the larger civil rights goal. Thus the statute was altered not only by judicial decisions and changing views on questions of democratic participation; pressure from the civil rights community, too, helped to transform the Voting Rights Act into an instrument for affirmative action, a means to ensure ballots that promoted "full" and "effective" representation.

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Executive summary of the Bullock-Gaddie expert report on Georgia:

By Edward Blum and Abigail Thernstrom

Testifying in a 2002 voting rights case, Rep. John Lewis said:

"We have changed. We've come a great distance. I think in - - it's not just in Georgia, but in the American South, I think people are preparing to lay down the burden of race....There has been a transformation...It's altogether a different world..."

Lewis, of course, had put his life on the line marching for basic black enfranchisement in 1965; he knows we live in a "different world" today.

Under contract with us, two distinguished scholars—Charles S. Bullock III, the Richard B. Russell professor of political science, and Keith Gaddie, professor of political science at the University of Oklahoma—have documented that transformation in Georgia. Their main points:

• Georgia had a terrible history of black disfranchisement, but in the most recent presidential elections, black participation rates actually slightly exceeded those of whites. And if one compares Georgia to states outside the South, black registration is slightly higher and turnout is roughly the same.

• At ever-increasing rates, blacks are being elected to public office in the state. Between 1973 and 2005, 29 congressional races were won by blacks, 13 of them in majority-white districts. Four out of thirteen members of the state's current delegation to the U.S. House of Representatives are black—a uniquely high number in proportion to the state's population. Thirty-four officeholders in Georgia are elected statewide, and currently nine are black—a figure just short of proportional racial representation.

• By 2001, the black leadership in Georgia had become convinced that the election of blacks to office no longer depended on the creation of overwhelming majority-minority districts. An expert hired by the black attorney general had concluded that African-American candidates did not even need majority-black districts in order to be elected. The legislative black caucus, in signing on to the 2001 plan, was assuming substantial white crossover voting—an assumption based on experience.

• White support for black candidates in Georgia today is higher than black support for white office-seekers. Moreover, blacks often determine the outcome of the Democrat primary. But with the movement of whites into the Republican Party in the 1990s, neither white nor black Democrats attracted a majority of white votes. In 2004, white Democrats running statewide did no better than those who were black. In fact, looking at the four

most recent elections, black candidates running statewide had a success rate of 71 percent, while the white rate was only 41 percent.

•In sum, blacks in Georgia are now fully enfranchised. There was reason in 1965 to target Deep South states like Georgia for extraordinary federal oversight over election procedures. But we live in a different world in 2005.

An Assessment of Voting Rights Progress in Georgia
Prepared for the Project on Fair Representation
American Enterprise Institute

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An Assessment of Voting Rights Progress in Georgia

Georgia was among the first states to adopt provisions that impeded black participation. In 1871, Georgia became the first state to enact a poll tax which it later made cumulative. In the wake of the Mississippi Constitution of 1890 and the subsequent validation of that document's restrictions on African-American political participation by the U.S. Supreme Court, Georgia joined other southern states adopting additional prerequisites for registration. These included a literacy test that required voters to demonstrate an ability to both read and write.

Like many southern states, Georgia also adopted provisions that limited participation in the Democratic primary to white votes. Since no Republicans won any major offices in the state for almost 100 years, the Democratic primary determined who would hold public office in Georgia - - except in a couple of mountain counties - - up until the early 1960s.

Georgia repealed the poll tax when it adopted a new constitution in 1945. The state's use of the white primary was invalidated by *Smith v. Allwright* (1944). Georgia sought to avoid this decision that banned the white primary in Texas. In his last gubernatorial bid, three-time governor Eugene Talmadge ran on a platform that promised to maintain the white primary. Despite Talmadge's commitment to the white primary,

V.O. Key reports that a number of blacks voted in that year's Democratic primary.[1] When the General Assembly sought to maintain an all-white primary by divorcing the operation of the selection process from state influence, Acting Governor M.E. Thompson vetoed the legislation.

Even with the elimination of the white primary and the poll tax in the 1940s, black registration rates remained relatively low in Georgia the early 1960s. The literacy test coupled with frequently antagonistic local registrars discouraged black participation. In the period immediately preceding the enactment of the 1965 Voting Rights Act only 27.4 percent of Georgia's non-white voting age population was registered.[2] At that time, more than twice as large a share of the white voting age population (62.6 percent) was registered. Only Alabama and Mississippi had smaller proportions of their potential black electorate registered to vote prior to the Voting Rights Act. In 30 counties with substantial African-American populations, less than ten percent of the age eligible blacks were registered in 1962. In four counties, fewer than ten non-whites had gotten their names on the voting list.[3] With little more than a quarter of the age-eligible non-whites registered to vote, Georgia was subject to the trigger mechanism of the 1965 Voting Rights Act.

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[1] V.O. Key, Jr., *Southern Politics* (New York: Alfred A. Knopf, 1949), p. 636.
[2] Figures for December 1962 are fromU.S. Commission on Civil Rights, *Political Participation* (Washington, D.C.: U.S. Government Printing Office, 1968), p. 238. Figures are presented for non-whites and whites. Almost all Georgia non-whites in 1960s would be African American.
[3] We exclude from this tabulation four mountain counties which had fewer than ten non-white residents of voting age as of the 1960 Census.

Black Registration and Turnout

As in other southern states covered by Section 5 of the Voting Rights Act this new legislation had an immediate and dramatic impact. By 1967, a majority of Georgia's non-white voting age population (52.6 percent) had registered.[4] The increased registration also extended to the white population where just over 80 percent of the age eligible population had registered to vote.

Particularly dramatic increases in black registration occurred in the 30 counties that had most consistently rebuffed black political overtures. Table 1 reports the white and non-white registration rates as of December 1962 for the counties in which fewer than 10 percent of the age-eligible non-whites were registered. In the 30 counties in which fewer than 10 percent of the non-white potential electorate was registered, substantially larger shares of the white population were registered except for Chattahoochee county. In a number of the counties, the registration rolls included more names of whites than the age eligible white population counted in 1960. The evidence is clear that while non-whites found it difficult to register, comparable barriers did not dissuade whites who wished to sign up to vote.

(See Table 1)

By 2004, not only had registration rates for African Americans gone a long way towards catching up with white registration rates, the more important element of actual participation shows large numbers of blacks turnout in each of these counties. As shown in Table 1, in each of the 30 counties with low rates of black registration in 1962, African American registration had become widespread by 2004. Not only had registration

[4] *Political Participation*, *op. cit.*, p. 239.

increased massively but so had participation rates. In every one of the 30 counties at least a majority of the black women who were registered voted in 2004. At the upper end, in the Atlanta suburbs of Fayette, Chattachoochee and Marion counties, 88 percent of the black women along with 82 percent of the black men who were registered participated. A higher proportion of black female registrants than white male registrants voted in Fayette County. The more common pattern, however, was for black turnout rates to lag those for whites although in a number of counties, the participation rates of black females were roughly comparable to those of whites. Generally the greater racial disparities persisted in rural counties while in the suburbanizing counties like Chattahoochee, Fayette, Houston, Lee and Madison, voting rates for black women were quite similar to those for whites. Participation rates among African-American men invariably lagged those of black women with the disparity often being more than 10 percentage points.

After each election the U.S. Bureau of the Census conducts a massive survey to determine the registration and turnout rates in the previous general election. These figures are self reports and the denominator in calculating the percentages of registration and participation is the voting age population of the jurisdiction. Self reported political participation data tend to overestimate actual participation rates; nonetheless these figures are useful for making comparisons over time and across jurisdictions.

By 1980, the share of the African American voting age population that reported it was registered in the U.S. Bureau of the Census survey, stood at 59.8 percent as shown in Table 2. The comparable figure for the share of the white voting age population claiming to be registered was 67 percent. During the1980s approximately seven percentage points

more whites than blacks were registered with the greatest disparity, 7.8 points, occurring in 1982.

(See Table 2)

In 1990, black and white Georgians had nearly identical registration rates. Among African Americans of voting age, 57 percent reported being registered compared with 58.1 percent of whites. In 1994, a larger proportion of blacks (57.6 percent) than whites (55 percent) reported being registered. Among blacks 57.6 percent reported being registered compared with 55 percent of the whites. Beginning with 1994, blacks have reported registering at higher rates than have whites in four of the six most recent elections. This includes both the mid-term elections of 1994 and 1998 as well as the two most recent presidential elections. In 2002, the disparity is only 1.1 percent points with 61.6 of voting age blacks and 62.7 percent of voting age whites reporting that they were registered.

The data in Table 2 permit comparisons between the reported registration rates of Georgians and non-southerners. From 1980 through 1994, blacks living outside the South invariably reported higher rates of registration that did Georgia blacks. In 1982, 1984, 1988 and 1992, the difference approximated ten percentage points. Beginning with 1996, self-reported registration rates among Georgia blacks always exceed those for blacks outside the region. In the three most recent elections for which comparisons are available, Georgia black registration is approximately five percentage points higher than for non-southern blacks.

These figures indicate that the disparity in registration rates which prompted the passage of the Voting Rights Act and the inclusion of Georgia as a state subject to the

trigger mechanism have been corrected. Even before the implementation of the Motor Voter Act (1993) and the Help America Vote Act (2002), both of which were designed to facilitate registration and participation, the disparity in black and white registration rates had largely been eliminated. During the last four elections, black registration has generally exceeded white registration in Georgia. As of 2004, African Americans constituted 27.2 percent of all registered voters in Georgia. This is almost exactly the black share of the citizen voting age population as of the 2004 census which stood at 27.5 percent.

Moreover, the disparity in self-reported registration rates between African Americans in Georgia and outside the South has been eliminated. Blacks in Georgia now report signing up to vote in rates equal to or higher than blacks in other parts of the country.

The rate at which registered voters have turned out to vote has also increased in Georgia. As shown in Table 3, in 1980 the Census Bureau estimated that 43.7 percent of the age-eligible African Americans voted in the general election along with 56 percent of the white adults. In the mid-term election of 1982, the racial disparity dropped to 8.2 percentage points as 32.5 percent of the voting age blacks along with 40.7 percent of the whites reported participating in the general election. The pattern has generally been for there to be a greater disparity in turnout rates in presidential than in mid-term elections. Until 1996, whites turned out in presidential elections at rates at least ten percentage points above those for blacks. Even in 1996, white turnout exceeded the black figure by almost seven percentage points. In contrast, in mid-term elections, the greatest racial differences in 1982 and 1999 and are under almost 8 percentage points. In 1990, almost

identical percentages of black and white Georgians went to the polls and in 1986, the white figure is only three points above the black figure.

(See Table 3)

Reported black turnout rates as a percentage of the age eligible remained in the 40 percent range in presidential elections until 2000 when it reached 51.6 percent. This level of black participation exceeded the percentage of age eligible whites who reported voting (48.3 percent). In the most recent presidential election, black participation rates again slightly exceeded those for whites. This also marked the high point of black registration during the last quarter century. In mid-term elections, the proportion of age eligible blacks who reported voting peaked in 1990 at 42.3 percent. Thereafter, it seesawed dropping to 30.9 percent in 1994, rising to just over 40 percent in 1998 and the ebbing to 38.5 percent in 2002. Only in 1998 has black turnout exceeded white participation in mid-term year.

The bottom part of Table 3 provides turnout data for blacks and whites outside of the South. In the 1980s, blacks voted at much higher rates in the non-South than in Georgia. In 1982, for example, the difference reached 16 percentage points while in the next presidential election year, it was 13 percentage points. In the three most recent elections for which non-southern figures are available, however, the reported participation rates for African Americans in Georgia and the non-South have been essentially equal. In 1998, both sets of blacks reported voting at just over 40 percent while in 2002, the figure was approximately 39 percent. In 2000, blacks outside the South reported participating at a rate 1.5 percentage points greater than Georgia African Americans.

The comparison of black participation rates in Georgia and outside of the South indicate that much of the disparity of 20 years ago has been eliminated. Note that in two of those three most recent election years, the reported black participation rate in Georgia exceeds that for whites while outside the South, participation rates are almost identical to those for Georgia African Americans.

A problem with self-reported political participation data is a tendency by respondents to give socially-approved answers. Some share of individuals who were unregistered will tell a pollster that they had registered. And because of the heavy emphasis placed upon the civic duty of voting, a number of non-voters will report that they went to the polls.[5]

Georgia is one of the very few states that maintains its registration data by race. Therefore in Georgia and four other states it is possible to have data on registration free of the problems associated with over-reporting. The registration data maintained by the states that collect information on race will have a smaller problem since individuals may not accurately indicate their race or opt for the "other" category.

Since 1996, Georgia's Secretary of State has done a post-election audit by going through the voter sign-in sheets to determine who actually turned out and then cross checking that information against the registration data that show the race of the voter. Unlike the figures provided by the Census Bureau, these are not estimates but instead are actual counts. Table 4 shows that in 1996, 53.5 percent of the black registrants turned out

[5] See, for example, Paul R. Abramson, and William Claggett, 1984. Race-related Differences in Self-Reported and Validated Turnout. *Journal of Politics*, 46: 719-739.

along with 64.3 percent of the white registrants. In the gubernatorial election year of 1998, the racial difference shrank as 42.8 percent of black registrants along with 48.2 percent of white registrants who voted. In both 2000 and 2002, about 10 percentage points more whites than black registrants voted. The 2004 presidential election spurred participation rates in Georgia as it did in much of the country. Among black registrants, 72.2 percent voted and 80.4 percent of the white registrants participated in that election.

(See Table 4)

While turnout rates for whites remain higher than those for blacks, the variation in the participation rates for both groups indicate that blacks are not subject to systematic discrimination at the polling place. The black turnout rate in 2004 exceeds the white turnout rate in any year prior to 2004.

Political science research suggests that lingering disparities in participation rates among ethnic groups may be due more to differences in socioeconomic characteristics than in obstacles to registration. The literature on American political participation consistently finds that socioeconomic status (SES) is the determinant of political involvement. The classic *Who Votes?*,[6] Leighley and Nagler's[7] reexamination of the *Who*

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[6] Raymond Wolfinger, and Steven Rosenstone. 1980. *Who Votes?* New Haven: Yale University Press.

[7] Jan E. Leighley and Jonathan Nagler. 1992. Class Bias in Turnout: The Voters Remain the Same. *American Political Science Review* 86: 725-736; Jan E. Leighley and Jonathan Nagler. 1992. Individual and Systemic Influences on Turnout: *Who Votes?* 1984. *Journal of Politics* 54: 718-740.

Votes? analysis, and the work of Verba and his colleagues[8] consistently finds this effect across ethnic and racial groups. Additional research finds that, once one controls for SES, black "overparticipation" is found [9]. However, Abramson and Claggett[10] observed that African-American voter participation sill lagged white participation, even when controls for socio-demographic influences -- especially education – were introduced, while Uhlaner, et al find that Anglo whites and African-Americans have similar rates of political participation, and that it is Latinos who lag in voting due to education and

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[8] Sidney Verba and Norman Nie, 1972. *Participation in America: Political Democracy and Social Equality.* New York: Harper, Row; Sidney Verba, Kay Lehman Schlozman, and Henry Brady, 1995. *Voice and Equality Civic Volunteerism in American Politics.* Cambridge: Harvard University Press.

[9] See, for example, Thomas M. Guterbock, and Bruce London. 1983. Race, Political Organization, and Participation: An Empirical Test of Four Competing Theories. *American Sociological Review* 48: 439-453; Marvin E. Olsen, 1970. Social and Political Participation of Blacks. *American Sociological Review.* 35: 682-697; Verba and Nie, 1972.

[10] Paul R. Abramson, and William Claggett, 1984. Race-related Differences in Self-Reported and Validated Turnout. *Journal of Politics*, 46: 719-739.

citizenship factors.[11] Leighley and Vedlitz find that cultural theories are largely not valid in explaining differences in participation beyond SES effects.[12]

Socio-economic status matters, but so too does political effort. Katherine Tate argues in the *American Political Science Review* that participation by African-Americans is associated with education, political interest, and partisanship.[13] She also observes that intensity of racial identity is not a source of participation,[14] but instead participation in civic culture organizations such as churches or political organizations drives participation. Arnold Vedlitz finds that intensive voter registration drives do not in and of themselves increase participation, but rather increase the number of non-voting

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[11] Carole J. Uhlaner, Bruce E. Cain, and D. Roderick Kiewiet, 1989. Political Participation of Ethnic Minorities in the 1980s. *Political Behavior* 11: 195-231.

[12] Jan E. Leighley and Arnold Vedlitz, 1999. Race, Ethnicity, and Political Participation: Competing Models and Contrasting Explanations. *Journal of Politics* 61: 1092-1114.

[13] Katherine Tate, 1991. Black Political Participation in the 1984 and 1988 Presidential Elections. *American Political Science Review* 85:1159-1176.

[14] Maurice Mangum (2003), writing in the *Political Research Quarterly*, finds that group efficacy – the belief that their group is taken seriously – motivates participation among African-Americans, as does trust in government and the degree of individual political engagement. See Maurice Mangum, 2003. Psychological Involvement and Black Voter Turnout. *Political Research Quarterly* 56: 41-48.

registrants.[15] Instead, it is registration plus mobilization – as Tate observed – that matters. Wielhouwer validates the importance of these findings by uncovering that, while African-Americans are undercontacted, the undercontacting arises from a lack of GOP contacting.[16] Those who are contacted belong to civic culture organizations that possess strong social networks. According to Wielhouwer, while education still matters, contacting is important to explaining variation in mobilizing black voters.

The actual figures on turnout rates indicate that African Americans have not voted at higher rates than whites in South Carolina. While the figures in Table 3 are more reliable than those in Table 2, comparisons with most other states are not possible using the Table 3 data since most states do not maintain registration data by race nor do they report turnout data by race. Therefore even though the problems frequently associated with over-reporting of turnout and registration by individuals render the figures in Tables 1 and 2 somewhat suspect, nonetheless the suspicions are likely to be widespread so that using data in Table 1 and 2 is appropriate for making comparisons across state or between states and regions.

African-American Officeholding

In 1969, Georgia had a total of 30 African American officeholders of whom 14 served in the legislature. Table 5 shows that another eight sat on city councils and three

[15] Arnold Vedlitz, 1985. Voter Registration Drives and Black Voting in the South, *Journal of Politics* 47: 643-651.

[16] Peter W. Wielhouwer, 2000. Releasing the Fetters: Parties and the Mobilization of the African American Electorate. *Journal of Politics*. 62: 206-222.

served on school boards. By 1973, the number of black officials in Georgia had risen to 100 and three years later it topped to 200. By 1984, there were just over three hundred African Americans holding public office in Georgia with 170 serving on city governing board and another 58 serving on school boards.

(See Table 5)

As the consequences of Section 2 of the revised Voting Rights Act of 1982 began to take affect and at-large systems were replaced by single-member district systems, African American officeholders continued to grow. By 1987, the total number of blacks holding public office in Georgia stood at almost 150 percent above the 1984 figure and by 1991 more than 500 blacks served in Georgia. Thereafter the growth increases so that by 2001, 611 African Americans hold office in the Peach State. As in most recent years, approximately half of the black office holders serve at the municipal level with another six serving in county offices and approximately an equal number sitting on school boards.

African Americans in Congress

In 1972, Georgia joined Texas in becoming the first southern state to send an African American to Congress in the 20th century. Civil rights activist Andrew Young, who had won the Democratic nomination for Congress in 1970 but lost to a Republican incumbent, won the seat in 1972. Young won in a 44 percent black district by fashioning a biracial coalition that involved substantial backing in the white community. Young won reelection in 1974 and 1976 by taking two-thirds of the vote in the latter general election. After his third victory, Young resigned his position in order to accept the appointment by President Jimmy Carter to become the U.S. Ambassador to the United Nations.

In the special election to fill the vacancy created by Young's resignation, white liberal Wyche Fowler led a field 12 candidates with 40 percent of the vote. In the subsequent runoff, Fowler easily defeated civil rights hero John Lewis by taking 62 percent of the vote.

Fowler held the Fifth Congressional district seat for a decade during which time he defeated a number of African-American challengers. Even after the district became 65 percent African American by population following the 1982 redrawing, Fowler continued to win reelection. As had been the case with his predecessor, Fowler succeeded by appealing to a biracial coalition.

Following Fowler's 1986 decision to seek the U.S. Senate seat held by Republican Mac Mattingly, a large field entered the Fifth District Democratic primary, all but one of whom was African American. In the initial primary, state Senator Julian Bond led with 47 percent of the vote while John Lewis, making another bid for the House, polled 35 percent of the vote. In the crucial runoff, Lewis succeeded by winning more than 80 percent of the white vote. While Bond attracted the bulk of the black vote, Lewis's biracial coalition produced a 52 percent majority.

John Lewis continues to represent the Fifth District and is the dean of Georgia's House delegation. In 1993, he was joined by two other African Americans, Sanford Bishop from the Second District in southwest Georgia and Cynthia McKinney who won the Eleventh District that stretched from Atlanta's eastern suburbs to Augusta and then on down to Savannah. With three African Americans in the eleven person delegation, blacks had achieved a level of representation equal to their share of Georgia's 1990 population.

Following the 2001 redistricting, David Scott became the fourth African American in Georgia's House delegation. With four African-American House members, Georgia equaled the largest number of black members ever to represent a state in Congress at one time. The other states that have had as many as four African Americans in the House all had much larger delegations. Currently the 29-member New York delegation and the 53-member California delegation each has four African-American representatives. When Scott joined the delegation that now included 13 members, African Americans' share of Georgia House seats (31 percent) exceeds the percent black in Georgia's population (29 percent).

The numbers that appear beside the names of the African-American legislators in Table 7 indicate the percent black in the total population in the district using the figures from the preceding census. These numbers demonstrate that of 29 congressional elections won by African Americans 13 occurred in districts in which less than half of the population was black. Of the 16 contests won by African Americans in majority-black districts, ten occurred in the Fifth District. Sanford Bishop has won five of his seven elections in districts in which most of the population was white. Even in the two elections that he won when his southwest Georgia district had a black majority in its population, most of the registrants were white. David Scott has also won in a district in which blacks do not constitute a majority of the population or of the registrants. Half of Cynthia McKinney's six victories came in a district in which whites outnumbered blacks. Even in 2002 when she lost her reelection bid in the Democratic primary, a contest in

which more whites than blacks voted,[17] the winner was another African-American woman, state court judge Denise Majette. The ability of African Americans to win congressional seats in districts in which most voters are white provides evidence that at least a share of the white electorate is quite willing to have a black representative.

In 1995 in *Miller v. Johnson*, the U.S. Supreme Court struck down Georgia's Eleventh congressional district for violating the Equal Protection Clause of the Fourteenth Amendment. The court concluded that in drawing this district the General Assembly violated the U.S. Constitution because it relied predominately on race and subordinated traditional districting principles. That decision touched off widespread concern, especially in the minority community, that redrawing the majority-minority districts to increase their white populations would end the careers of the African American legislators. The 1996 election proved those fears to be unfounded as both Bishop and McKinney won reelection easily. Both of the black members who now found themselves in majority-white districts triumphed over white Republican challengers in the general election. In the primary, Bishop defeated two white challengers while McKinney turned back opposition from three white Democrats.

Some sought to discount these victories by attributing them to the incumbency status of the black members and asserted that had these been open seats, whites would have won. The 2002 election provides a partial test of that proposition in District 13. There state Senator David Scott faced three experienced challengers. The field competing for this open seat included another black state senator, a white state senator,

[17] Charles S. Bullock, III, Ronald Keith Gaddie and Ben H. Smith, III, "White Voters, Black Representation," presented at the annual meeting of the Southwestern Political Science Association, San Antonio, TX, April 16-19, 2003.

and a former white congressional candidate who had most recently served as executive director of the state Democratic Party. Not only did Scott turn back these qualified opponents, he managed to win a majority of the vote in the Democratic primary thereby avoiding a runoff.

While Scott managed to win in a majority-white district, an African American nominee lost in another Georgia district that had approximately the same racial composition. In the 42.3 percent black Twelfth District, African American Champ Walker won the Democratic nomination in a runoff against another black contender. Walker, however, proved to be a deeply flawed candidate who had been arrested multiple times, although never convicted. Moreover, he ran an inept campaign in which he performed poorly in some debates and avoided others.[18] Walker, a political novice, lost the general election taking only 45 percent of the vote. Walker's greatest strength may have also proven to be his greatest liability. His father, Charles Walker, served as the majority leader in the state Senate that, along with the House, drew the district in which his son Champ ran. Suspicions of corruption had surrounded the older Walker and ultimately he was convicted on more than 125 federal charges and removed from the Senate.

African Americans in the State Legislature

Georgia elected an African American senator in 1962 making Leroy Johnson the first black southern legislator in modern times. By 1965, when the Voting Rights Act was first passed, Johnson had been joined by a second African American in Senate,

[18] Charles S. Bullock, III, "The 2004 Georgia 12th Congressional District Race," in *Dancing without Partners*, edited by David B. Magleby, J. Quin Monson and Kelly D. Patterson (Provo, UT: Center for Study of Elections in Democracy, 2005), pp. 275-287.

which at that time still had 54 members. The Georgia House which reapportioned after the Senate had seven African Americans following implementation of the one-person, one-vote standard in a 1965 special election. Since the House had 205 members at that time, African Americans held approximately 3 percent of the seats in the lower chamber.

As Table 6 shows, increases in the number of seats held by African Americans in the Senate came slowly with only two black members until after the 1980s redistricting when the number doubled to four. By 1985, blacks held more than a tenth of the seats in the Senate. Gradual increases continued and by 1997, the black delegation constituted almost a fifth of the Senate, a figure that, aside from a dip in 2003, has persisted through 2005.

(See Table 6)

In the House, the growth in the number of seats controlled by blacks continued from the initial election of African Americans following a special redistricting carried out in 1965. By 1975, African Americans held a tenth of the House seats. Black representation in the House stalled for a decade beginning in 1977 before it began gradually increasingly. In 2001, blacks held a fifth of the House seats and following redistricting, their share increased to 21.7 percent. These numbers persisted in 2005 although in that year, for the first time in modern memory, a Republican African American served in the House.

As Table 6 demonstrates, black representation in the Georgia General Assembly has increased dramatically since the initial passage of the Voting Rights Act. These increases come even as the number of Democrats serving in the legislature has decreased.

In the 2005 Senate there are more black Democrats (11) than white Democrats (10).[19] Following the defection of a white to the GOP in August 2005, the House had three more white (41) than black (38) Democrats.

Statewide African American Officials

The first African American to hold a statewide office in Georgia was Robert Benham who served on the state Court of Appeals, the state's second highest tribunal. Benham had initially been appointed in April of 1984 and in the subsequent summer non-partisan primary, he defeated three white challengers. The position to which Benham was initially appointed has passed to two other African Americans.

When Benham was appointed to the Supreme Court of Georgia he was succeeded by Clarence Cooper a superior court judge. Cooper won a full term approximately six months after being appointed and in doing so turned back a white challenger. When Cooper received promotion to the Federal district bench, John Ruffin, another African American succeeded him. Ruffin has subsequently been returned to the bench twice with no opposition.

In 1999, Governor Roy Barnes appointed two African Americans to newly created seats on the Court of Appeals. Yvette Miller and Herbert Phipps have each subsequently won reelection to the Court of Appeals with no opposition.

In 1989, Robert Benham became the first African American to serve on the Supreme Court when he was named to an interim vacancy. In 1990, he won reelection by defeating a white challenger. Benham has run unopposed in the elections of 1996 and 2002.

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[19] The 22nd Democrat in the Senate is a Latino. There is also a Latino in the House Democratic delegation.

In 1992, Leah Sears-Collins became the first African-American woman to serve on the Supreme Court when she was appointed to a vacancy by Governor Zell Miller. A few months later, Sears-Collins won election to the remainder of the term and in so doing defeated a white challenger. When Sears won a second six-year term, she did so by defeating two white challengers in the non-partisan primary. Again in 2004, Sears won another term and in so doing defeated a white conservative who had strong support from Georgia's Republican Governor Sonny Perdue and from other leading Republicans.

In June of 2005, Gov. Perdue tapped a third African American for the seven-person Supreme Court. Harold Melton, who had been the governor's chief counsel, will face the electorate for the first time in 2006 when he runs for the remaining years of the term.

Some have discounted the victories of black judges arguing that, although statewide offices, judgeships attracted little public interest and, at least until recently, were low-key affairs. In 1998, efforts to discount the statewide victories of black judges had to deal with two victories by African Americans who won constitutional offices. Former state Representative Thurbert Baker had been appointed to an interim vacancy as attorney general of Georgia. In 1998, he won a full term against a strong challenge from a Republican senator. In 2002, Baker won a second term.

At the same time that Baker was winning a full term as attorney general, Michael Thurmond, a former state legislator, won election as the state's labor commissioner. Thurmond's victory came after he won the nomination in a Democratic runoff and then turned back a Republican opponent. Like Baker, Thurmond won a second term in 2002.

In 2000, David Burgess became the first African American to hold one of the five seats on the state Public Service Commission. Members of the PSC must live in a particular district although they are elected statewide.

Georgia has a total 34 officials who are elected statewide - - including two U.S. Senators, eight constitutional officers, seven members of the Supreme Court, twelve members of the Court of Appeals, and five members of the Public Service Commission. As of the middle of 2005, nine of these 34 statewide officials are African American. All but the newest member, Harold Melton who was only recently appointed to a vacancy on the Supreme Court, have won election at least once and several of these have multiple statewide victories under their belts.

All of these African Americans who have won statewide elections have done so with substantial white support. Since as Table 4 shows, whites cast approximately three-fourths of the votes in a general election, it would be impossible for an African American to win by mobilizing only black support.

Redistricting

In light of the success enjoyed by African Americans seeking office in Georgia it may not be surprising that in 2001 much to the state's black leadership agreed to have black concentrations in legislative districts reduced. As shown in Table 7, the black percentage in John Lewis' district dropped from 62 to 56 percent. In the state Senate, the plan adopted by that body in 2001 reduced the black voting age population in majority-black districts by an average of 10.3 percentage points as shown in Table 8.[20] This plan was supported by Majority Leader Charles Walker, Rules Committee Chair David Scott

[20] Testimony of David Epstein in *Georgia v. Ashcroft*, C.A. No. 01-2111 (EGS) (D.C. D.C.), February 4, 2002, Day 1, pp. 15-20.

and Robert Brown, the vice-chair of the Reapportionment Committee. These three legislative leaders are African Americans and could have stopped the plan had they been concerned that retrogression would reduce the likelihood that African Americans could win seats. Three districts that had been more than 60 percent black in voting age population emerged from the new plan less than 51 percent black in voting age population. Walker's own district went from 63.1 down to 51.5 percent black in its voting age population. Brown strongly supported the plan that reduced the black voting age concentration in his district from 62.3 down to 50.8 percent.

(See Table 7)

In accepting these reductions in minority concentrations, the members of the Legislative Black Caucus seemingly bought into the analysis prepared by David Epstein, the expert employed by Attorney General Thurbert Baker, who is also an African American. Epstein concluded that African Americans have a reasonable chance of being elected even in districts in which blacks constituted less than half of the voting age population. Specifically, his estimate was that a legislative district without an incumbent needed a black concentration of 44 percent of voting age population for African Americans to have a 50-50 chance of electing their preferred candidate.[21] Among those who agreed with the results of the professor's sophisticated models was Charles Walker who testified in response to a question about what level the black voting age population would need to be for African Americans to have an equal chance of winning in Georgia.

[21] *Ibid.*, February 5, 2002, Day 2, Volume II, p. 29.

Walker responded, "Forty percent and above. Generally around the state, I would feel comfortable at a 45 percent BVAP level."[22]

As the black voting age population increases above 44 percent, the probability of electing a black increases. In four of the districts approved by the black senators, the majority of the registrants were white. In the plan that was replaced, blacks had constituted a majority of the registered voters in all but twelve districts. In all but two of the districts, at least 60 percent of the registrants were black in 2000. The number of Senate districts in which the black registration figure exceeded 55 percent dropped from eleven in the old plan to seven in the plan passed in 2001.

As demonstrated earlier, the rate of white registration tends to exceed that of black registration. Moreover, among registered voters, figures from the Secretary of state reported in Table 4 show white registrants voting at higher rates than blacks. Consequently it is likely that whites would constitute most of the voters in at least five of the previously majority-black districts in the 2001 plan. Therefore, the implication of the Epstein analysis that was accepted by the Legislative Black Caucus is that African-American candidates can attract a sufficient share of the white vote since if whites voted cohesively against black candidates then in districts in which whites cast most votes, African Americans could not win.

The evidence both from statewide elections and some congressional elections indicates that African Americans now enjoy a degree of success in Georgia even when the bulk of the electorate is white. The blacks who have won statewide contests have

[22] Affidavit of Charles Walker in *Georgia v. Ashcroft*, 539 U. S. ____ (2003), February 1, 2002, p. 12.

succeeded at a time when blacks cast a quarter of all votes or less thereby indicating a substantial white crossover vote for the African-American candidate.

The Department of Justice in the Section 5 hearing conducted by the District Court of the District of Columbia on Georgia's 2001 plans accepted the reductions in black concentration in all but three of the state Senate districts. DOJ voiced no concerns about any of the congressional or state House districts. DOJ even accepted Senate District 15 in which the black VAP fell from 61.6 down to 50.9 percent and District 22 in which the decrease was from 63.1 down to 51.5 percent. In both of these districts more than 64 percent of the registrants had been black but in the new plan blacks accounted for right at 50 percent of the registrants. Thus DOJ found most of the work done by the Georgia General Assembly acceptable under Section 5 of the Voting Rights Act. Even the three Senate districts (2, 12 and 26) to which DOJ objected, where subsequently approved by the U.S. Supreme Court which found that Section 5 was not violated by any of the 2001Georgia districting plans.[23]

In the forefront of those who believed that reducing the black concentration in Senate districts did not endanger the reelections of incumbents or endangered the political prospects for African American candidates was Georgia's African-American Attorney General Thurbert Baker. He pursued an appeal to the Supreme Court challenging the district court conclusion that three of the Senate districts violated the Voting Rights Act by reducing black concentrations. Baker persisted in his appeal even when ordered to drop it by Georgia's new Governor Sonny Perdue (R).

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[23] *Georgia v. Ashcroft*, 539 U. S. ____ (2003),.

A leading supporter of the effort to reduce minority concentrations in legislative districts was Congressman John Lewis, whose severe beating at the Edmond Pettus Bridge during efforts to secure voting rights for blacks in Selma, Alabama helped mobilize support critical for the passage of the 1965 Voting Right Act. Explaining why he did not object to the reduction in minority concentrations, Lewis said of Georgia,

> The state is not the same state it was. It's not the same state that it was in 1965 or in 1975, or even in 1980 or 1990. We have changed. We've come a great distance. I think in - - it's not just in Georgia, but in the American South, I think people are preparing to lay down the burden of race.[24]

Elsewhere in this same affidavit, Lewis elaborated,

> I think many voters, white and black voters, in metro Atlanta and elsewhere in Georgia, have been able to see black candidates get out and campaign and work hard for all voters. And they have seen people deal with issues as, I said before, that transcend race: economic issues, environmental issues, issues of war and peace. . . So there has been a transformation, it's a different state, it's a different political climate, it's a different political environment. It's altogether a different world that we live, really.[25]

Senator Robert Brown who served as vice-chair of the Senate Reapportionment Committee also agreed that major changes have taken place in Georgia. During the course of an affidavit, he express the nature of the change as follows: "There are other examples of that around the state that I think suggest that there has been some change

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[24] Affidavit of John Lewis in *Georgia v. Ashcroft*, 539 U. S. ____ (2003), February 1, 2002, p. 18.
[25] *Ibid*, pp. 15-16.

from that rigid, 'if there's an African-American on the ticket, there's an automatic 'no' votes for whites.'"[26]

Senator Brown testified that with one possible exception, his fellow African-American senators strongly supported the plan that reduced the black concentrations in what had been the majority-black districts in their chamber. As he pointed out, speaking of the critical nature of black support, "The Senate Plan would not have passed without our support."[27] Brown opined that a district that was 50 percent black in its voting age population would likely be won an African American even if the candidate were competing for an open seat and lacked the advantages of incumbency.[28]

Racial Voting Patterns

The willingness of the Department of Justice and the Supreme Court to accept Georgia plans that in the past might have been found to be flawed by retrogression underscores the changes in racial voting patterns in the state. Where in the past, blacks may have been more willing to support a white candidate than white voters were to cast ballots for a black candidate, that situation has changed dramatically. Today, black voters area able to count on the support of substantially larger shares of the white electorate - - shares that exceed the proportion of black voters who defect from a black candidate to support a white candidate.

Another change has been the growing importance of the African –American vote in the Democratic primary. Table 9 shows that in 2004 blacks cast 47.2 percent of the votes in the Democratic primary. These figures are taken from the post-primary audit

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[26] Affidavit of Robert Brown in *Georgia v. Ashcroft*, 539 U. S. ____ (2003),, February 1, 2002, p. 8.
[27] *Ibid.*, p. 27.
[28] *Ibid.*, p. 30.

done by the secretary of state and are derived from the voter sign-in sheets. In each of the last two primaries, blacks have cast at least 45 percent of the Democratic ballots.

(See Table 9)

To help understand the significance of this high level of black participation in the Democratic primary consider that African Americans are now accounting for almost half of the Democratic primary votes even though they constitute 27 percent of the state's registrants. While there would certainly be variation from one part of the state to another, it is likely that in districts at least 30 percent black African American's may cast the bulk of the votes in the Democratic primary. Thus in any district with a sufficient minority concentration, African Americans would have a reasonable chance of wining a seat there is a strong probability that black votes can determine the Democratic primary choice.

Table 10 presents estimates of black and white support for African-American candidates running for Congress in the Fifth Congressional District from 1970 through 1982. The figures prior to 1978 show, with one exception virtually no black support for a white candidate. Except for the 1974 general election, white support for black candidates never attained 45 percent.

This era during which blacks gave near unanimous support to black candidates largely coincides with the period when Andrew Young was the Democratic nominee in the 5th district. Beginning with 1978, the district had a white Democratic incumbent, Wyche Fowler. The sharp decrease in black support for black candidates indicates Fowler's ability to fashion a biracial coalition. Figures in Table 10 also show that during the Young era, a sizable proportion of the white electorate supported an African – American candidate. This level of support among whites peaked in the 1974 general

election, when most voters in the white district backed Young in his first reelection bid. After Young left Congress to represent the United States at the United Nations, and was succeeded by Fowler, white support for black opponents to Fowler fell to ten percent or less.

(See Table 10)

Moving to the 1990s, estimates made by Allan Lichtman of voting behavior in statewide contests in the portions of Georgia in Congressional Districts 2 and 11 as configured in the 1992 plan, showed African-American candidates frequently getting more than 90 percent of the black vote and virtually none of the white vote.[29]

Estimates of racial voting patterns in Georgia congressional races held during the 1990s presented in Table 11 usually show African-American candidates polling 30 or more present of the white vote and 90 or more percent of the black vote.[30] The one African American who ran poorest among those in Table 11 is Denise Freeman who took on popular incumbent Charlie Norwood. The estimates presented in Table 11 suggest that while she continued to get very strong support among African American voters, she polled little more than a fifth of the white vote.

(See Table 11)

As Table 12 shows, the inability of African-American candidates - - except for John Lewis in 1998 - - to attract majority support among white voters is a difficulty also encountered by white Democrats. In neither 1996 nor 1998 did any white Democratic candidates for Congress in Georgia attract a majority of the white vote. In 1994, only one

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[29] Allan J. Lichtman, "Report on Issues Relating to Georgia Congressional Districts," May 26, 1994.

[30] Charles S. Bullock, III and Richard E. Dunn, "The Demise of Racial Redistricting and the Future of Black Representation," *Emory Law Journal* 48 (Fall 1999): 1209-1253.

Democratic nominee managed to get the bulk of the white vote. In 1992, three white Democrats got the bulk of the white vote. Thus what Table 12 shows in part is the increasing movement of white voters to the Republican primary. Consequently while in the early 1990s, white voters responded to black and white Democrats differently, by the end of the decade, most white voters found Democratic nominees, regardless of the candidates' race, unacceptable.

(See Table 12)

Another perspective on the similar response that Georgia voters give to Democratic candidates regardless of the race of the candidate, appears in Table 13. The 2004 Georgia ballot contained three offices that all voters could participate in - - two involved a white Democratic nominee while the Democratic Senate nominee was African American, one-term U.S. Representative Denise Majette. The results in Table 12 show that three Democrats, all of whom lost, polled remarkably similar vote shares with John Kerry attracting 41.4 percent of the vote, Majette 40.0 percent of the vote and the Democratic nominee for the Public Service Commission 39.5 percent.

(See Table 13)

Democrats split the 2002 statewide results winning five and losing six. However once we control for the race of the Democratic nominee, a different pattern emerges. The white Democratic nominees won only three of nine contests in which they competed while both of the black Democratic nominees won. Both of the African Americans were incumbents but then so were all but two of the white Democratic nominees. White Democratic incumbents won three while losing four contests, including the two at the top of the ticket for senator and governor.

In 2000 Democrats won half of the four contests in which all Georgians could vote and one of the winners was the only African American nominee. White Democrats succeeded in only one of three contests. In 1998 African Americans won two of three contests in which they represented the Democratic Party. White Democrats did approximately the same winning five of eight contests.

With regard to the African-American statewide candidate who lost in 1998, the nominee for Insurance Commissioner, not only did she have to run against a Republican incumbent, some questioned her credentials. African American Charles Walker who was at the time majority leader of the state Senate said that she "Did not have the support of the black community nor did she have a credible campaign. No one took her seriously... I mean she never - - she never even campaigned. She never even put signs up. She didn't do anything."[31]

When the figures are summed for the four most recent elections, Democrats won 14 times. Among African Americans, five of seven got elected for a success rate of 71 percent. Among whites, nine of 22 won for a success rate of 41 percent.

In sum, it appears that the politics of Georgia have undergone a dramatic transformation. In the post-trial brief filed before the three-judge panel that heard *Georgia v. Ashcroft*, the suit involving the state's 2001 redistricting plan that reduced black concentrations in a number of districts, Georgia's African American Attorney General Thurburt Baker asserted that:

> The State (sic) racial and political experience in recent years is radically different than it was 10 or 20 years ago, and that is exemplified on every level of politics

[31] Walker, *op. cit.*, pp. 22-23.

from statewide elections on down. The election history for legislative offices in Georgia - - House, Senate and Congress - - reflect a high level of success by African American candidates.[32]

[32] Post-trial brief of the state of Georgia, *Georgia v. Ashcroft* C.A. No. 01-2111 (EGS) (D.C., DC 2002), p. 2.

Table 1

Changes in Black Registration, 1962-2004, in Counties with Very Limited Black Registration in 1962 and Current Turnout Rates

	Nonwhite Regis	1962 Registration %		2004 Black Registration		2004 General Election Turnout by %			
County	1960	Nonwhite	White	Female	Male	Black Fem	Black Male	White Fem	White Male
Baker	24	1.9	100 +	599	467	77	69	81	79
Bleckley	45	3.3	73.9	619	380	75	55	80	79
Burke	427	6.5	84.1	3,273	2,062	72	63	79	78
Calhoun	145	6	100+	955	675	68	59	76	76
Chattahoochee	17	0.9	4.2	555	479	60	49	65	55
Early	261	8	92.9	1632	1056	55	46	78	78
Echols	19	7.7	92.9	75	39	51	41	66	62
Fayette	26	2.2	77	4772	3691	88	82	88	85
Glascock	1	0.3	100+	53	42	74	62	82	85
Harris	263	8.5	100+	1324	1054	72	55	80	78
Houston	413	9.8	44	7,445	5,037	79	73	80	80
Jeff Davis	56	6.2	100+	597	402	64	55	70	70
Jefferson	283	5.9	82	2877	1885	72	55	81	79
Lee	29	1.6	84.8	956	778	76	64	82	79
Lincoln	3	0.2	100+	828	563	71	62	80	81
McDuffie	251	9.2	87.5	2064	1211	69	61	80	78
Madison	55	5.6	77	516	352	78	66	80	80
Marion	55	3.4	100+	796	566	74	60	76	72
Miller	6	0.6	100+	517	366	53	40	73	71
Mitchell	375	7.5	100+	2544	1612	69	57	80	79
Quitman	38	5.4	100+	414	266	64	55	68	66
Seminole	11	0.9	100+	847	543	57	48	72	71
Stewart	136	5.1	100+	1033	800	68	49	77	73
Sumter	548	8.2	73.5	4240	2793	68	55	80	80
Talbot	219	8.7	100+	1322	980	74	66	79	77
Terrell	98	2.4	96.6	1719	1070	69	56	83	82
Treutlen	45	4.6	100	687	461	71	60	76	73
Warren	188	8.4	85.8	1171	713	70	58	85	81
Webster	9	0.9	98.8	369	254	71	60	83	82
Worth	296	7.8	100+	1497	963	62	56	80	78

Table 2
REPORTED REGISTRATION BY RACE IN GEORGIA AND OUTSIDE THE SOUTH, 1980-2004

	1980	1982	1984	1986	1988	1990	1992	1994	1996	1998	2000	2002	2004
Georgia													
Black	59.8	51.9	58	55.3	56.8	57	53.9	57.6	64.6	64.1	66.3	61.6	64.2
White	67	59.7	65.7	60.4	63.9	58.1	67.3	55	67.8	62	59.3	62.7	63.5
Non-South													
Black	60.6	61.7	67.2	63.1	65.9	58.4	63	58.3	62	58.5	61.7	57	na
White	69.3	66.7	70.5	66.2	68.5	64.4	70.9	65.6	68.1	63.9	65.9	63	na
Source: Various post-election reports by the U.S. Bureau of the Census.													

Table 3
REPORTED TURNOUT BY RACE IN GEORGIA AND OUTSIDE THE SOUTH, 1980-2004

	1980	1982	1984	1986	1988	1990	1992	1994	1996	1998	2000	2002	2004
Georgia													
Black	43.7	32.5	45.9	37.3	42.4	42.3	47.1	30.9	45.6	40.2	51.6	38.5	54.4
White	56	40.7	55.3	40.5	53.2	42.6	58.7	38.3	52.3	36.8	48.3	44.8	53.6
Non-South													
Black	52.8	48.5	58.9	44.2	55.6	38.4	53.8	40.2	51.4	40.4	53.1	39.3	na
White	62.4	53.1	63	48.7	60.4	48.2	64.9	49.3	57.4	45.4	57.5	44.7	na

Source: Various post-election reports by the U.S. Bureau of the Census.

TABLE 4

OFFICIAL REGISTRATION AND TURNOUT IN GEORGIA, 1996 -2004

Year	Registration		Turnout		Turnout Percentage	
	Black	White	Black	White	Black	White
1996	929,525	2,822,012	497,086	1,814,983	53.5	64.3
1998	971,847	2,867,910	415,839	1,382,647	42.8	48.2
2000	980,033	2,792,479	615,723	1,993,493	62.8	71.4
2002	962,720	2,695,306	458,640	1,536,635	47.6	57.0
2004	1,155,706	2,917,322	834,331	2,344,632	72.2	80.4

Source: Georgia Secretary of State

TABLE 5

NUMBER OF AFRICAN-AMERICAN ELECTED OFFICIALS
IN GEORGIA, 1969-2001

Year	Total	County	Municipal	School Board
1969	30	4	8	3
1970	40	3	15	7
1971	51	6	20	8
1972	65	7	32	10
1973	104	9	42	28
1974	137	9	72	31
1975	168	12	89	36
1976	204	13	115	43
1977	225	18	132	41
1980	249	23	149	43
1981	266	23	151	55
1984	301	29	170	58
1985	340	58	179	57
1987	445	94	229	73
1989	483	102	242	81
1991	511	103	257	84
1993	545	105	266	95
1995				
1997	579	99	290	104
1999	584	93	302	99
2001	611	102	293	118

Source: Various volumes of *The National Roster of Black Elected Officials* (Washington, D.C.: Joint Center for Political and Economic Studies).

TABLE 6

RACIAL MAKE UP OF GEORGIA GENERAL ASSEMBLY, 1963-2005

	House			Senate		
	White	Black	%Black	White	Black	%Black
1963	205	0	0	53	1	1.9
1965	198	7	3.4	52	2	3.7
1967	196	9	4.4	52	2	3.7
1969	183	12	6.2	54	2	3.6
1971	182	13	6.7	54	2	3.6
1973	166	14	7.8	54	2	3.6
1975	161	19	10.6	54	2	3.6
1977	159	21	11.7	54	2	3.6
1979	159	21	11.7	54	2	3.6
1981	159	21	11.7	54	2	3.6
1983	159	21	11.7	52	4	7.1
1985	159	21	11.7	50	6	10.7
1987	156	24	13.3	50	6	10.7
1989	155	25	13.9	49	7	12.5
1991	153	27	15.0	48	8	14.3
1993	149	31	17.2	47	9	16.1
1995	148	32	17.8	46	10	17.9
1997	147	33	18.3	45	11	19.6
1999	147	33	18.3	44	11	19.6
2001	144	36	20.0	45	11	19.6
2003*	139	39	21.7	45	10	17.9
2005*	139	39	21.7	44	11	19.6

*The House has two Latino members and the Senate has one.

TABLE 7

AFRICAN AMERICANS SERVING IN CONGRESS FROM GEORGIA,
1973 – 2005

	Dist 5	Dist. 2	Dist. 11/ Dist 4**	Dist 13
1973	Andrew Young (44%)			
1975	Andrew Young			
1977	Andrew Young *			
1979				
1981				
1983				
1985				
1987	John Lewis (65%)			
1989	John Lewis			
1991	John Lewis			
1993	John Lewis (62%)	Sanford Bishop (57%)	Cynthia McKinney (64%)	
1995	John Lewis	Sanford Bishop	Cynthia McKinney	
1997	John Lewis (62%)	Sanford Bishop (39%)	Cynthia McKinney (37%)	
1999	John Lewis	Sanford Bishop	Cynthia McKinney	
2001	John Lewis	Sanford Bishop	Cynthia McKinney	
2003	John Lewis (56%)	Sanford Bishop (45%)	Denise Majette (53%)	David Scott (41%)
2005	John Lewis	Sanford Bishop	Cynthia McKinney	David Scott

*Resigned to become US ambassador to the United Nations
**District renumbered from 11 to 4 with 1996 redistricting.

TABLE 8

CHANGE IN BLACK VOTING AGE POPULATION IN MAJORITY-BLACK DISTRICT PRODUCED BY THE FIRST 2001 SENATE PLAN

Senate	Population	Black Voting Age Population		BVAP
District	Deviation	2001 Plan	Previous Plan	Change
2	-3.12	50.31	60.30	-9.99
10	-4.96	64.14	70.30	-6.16
12	-4.15	50.66	55.30	-4.64
15	-4.67	50.87	61.60	-10.73
22	-4.85	51.51	63.10	-11.59
26	-4.39	50.80	62.30	-11.50
35	-1.76	60.69	75.60	-14.91
36	-4.73	56.94	60.00	-3.06
38	-4.76	60.29	76.30	-16.01
39	-4.98	56.54	54.40	2.14
43	-4.79	62.63	88.40	-25.77
55	-4.97	60.64	71.90	-11.26
Average		56.34	66.63	-10.29

TABLE 9

BLACK PERCENTAGE OF THE DEMOCRATIC PRIMARY TURNOUT, 1990 – 2004

Year	Total Primary Turnout	Democratic Turnout	Percent Black of Democratic Vote
1990	1,171,131	1,053,013	24.6
1992	1,151,971	875,149	22.1
1994	761,371	463,049	39.2
1996	1,182,168	717,302	22.5
1998	905,383	486,841	36.4
2000	960,414	613,884	31.3
2002	1,102,611	575,533	45.2
2004	1,418,838	731,111	47.2

Source: Georgia Secretary of state.

TABLE 10

RACIAL VOTING PATTERNS IN BLACK-WHITE
CONTESTS FOR GEORGIA'S 5TH CONGRESSIONAL DISTRICT

	Support for Black Candidate(s)	
	White Voters	Black Voters.
1970 Primary	23	99
1970 Runoff	32	100
1970 General	19	100
1972 Primary	39	100
1972 General	25	100
1974 General	55	100
1976 General	44	100
1977 Primary	5	98
1977 Runoff	4	96
1978 Primary	6	34
1982 General	10	31

TABLE 11

RACIAL VOTING PATTERNS IN GEORGIA CONGRESSIONAL CONTESTS INVOLVING AFRICAN-AMERICAN CANDIDATES, 1992 - 1998
(Percentages)

			WHITES				BLACKS			
	Race	Party	OLS	EI	HP	(N)	OLS	EI	HP	(N)
1992 Primaries										
Georgia District 2										
4 Candidates	B	D	26.3	32.3	35.1	(27)	88.7	83.9	80.7	(16)
2 Candidates	W	D	73.7	67.7	64.9		11.3	16.1	19.3	
Georgia District 11										
4 Candidates	B	D	56.5	61.7	63.0	(19)	92.1	89.9	87.2	(35)
Deloach	W	D	43.5	38.3	37.0		9.2	10.1	12.8	
1992 Runoffs										
Georgia District 2										
Bishop	B	D	17.5	30.4	28.7	(27)	85.5	76.6	74.9	(16)
Hatcher W	D (I)		82.5	69.6	71.3		14.5	23.4	25.1	
Georgia District 11										
McKinney	B	D	21.2	35.0	23.4	(19)	97.7	86.3	88.5	(35)
DeLoach	W	D	78.8	65.0	76.6		2.3	13.7	11.5	
1992 General Election										
Georgia District 2										
Bishop	B	D	30.0	33.2	34.0	(26)	100	98.2	96.6	(16)
Dudley	W	R	70.0	66.8	66.0		0.0	1.8	3.4	
Georgia District 11										
McKinney	B	D	31.6	37.9	38.4	(18)	97.9	96.4	95.7	(n/a)
Lovett	W	R	68.4	62.1	61.6		2.1	3.6	4.3	
1994 General Election										
Georgia District 2										
Bishop	B	D(I)	40.4	42.7	38.1	(35)	99.5	94.7	95.9	(19)
Clayton W	R		59.6	57.3	61.9		0.5	5.3	4.1	
Georgia District 11										
McKinney	B	D(I)	23.8	32.5	31.6	(23)	99.8	94.4	95.0	(42)
Lovett	W	R	76.2	67.5	68.4		0.2	5.6	5.0	

	Race	Party	WHITES OLS	WHITES EI	WHITES HP	WHITES (N)	BLACKS OLS	BLACKS EI	BLACKS HP	BLACKS (N)
1996 Primary										
Georgia District 4										
McKinney	B	D(I)	21.3	24.9	27.7	(59)	92.3	92.7	94.8	(13)
3 Candidates	W	D	78.7	75.1	72.3		7.7	7.3	5.2	
Participation			11.6	11.7	15.1		30.6	30.2	30.8	
1996 General Election										
Georgia District 2										
Bishop	B	D(I)	37.4	37.7	36.6	(65)	100.0	97.1	98.2	(10)
Ealum	W	R	62.6	62.3	63.4		0.0	2.9	1.8	
Georgia District 4										
McKinney	B	D(I)	30.7	32.1	30.7	(59)	100.0	99.2	95.1	(14)
Mitnick	W	R	69.3	67.9	69.3		0.0	0.8	4.9	
1998 General Election										
Georgia District 2										
Bishop	B	D(I)	37.8	39.5	41.3	(75)	99.9	95.4	98.4	(10)
MCCormick	W	R	62.2	60.5	58.7		0.1	4.6	1.6	
Georgia District 4										
McKinney	B	D (I)	34.9	36.2	36.8	(58)	97.2	95.0	93.1	(23)
Warren		B	R	65.1	63.8	63.2		2.8	5.0	6.9
Georgia District 5										
Lewis	B	D(I)	50.2	53.7	51.0	(36)	97.7	96.8	95.4	(100)
Lewis	B	R	49.8	46.3	49.0		2.3	3.2	4.6	
Georgia District 10										
Freeman	B	D	17.5	23.7	22.9	(66)	90.5	80.8	93.7	(13)
Norwood	W	R(I)	82.5	76.3	77.1		9.5	19.2	6.3	

OLS = ecological regression; EI = district - level estimates from King's (1997) method for ecological inference; HP = racially homogenous precincts. (I) = Incumbent; N = Number of racially homogeneous precincts; D = Democrat; R = Republican

TABLE 12

WHITE SUPPORT FOR WHITE GEORGIA DEMOCRATIC HOUSE CANDIDATES, 1992-1998
(Percentages)

					White Support			
		State	Dist.	Candidate	OLS	EI	HP	(N)
1992								
	Christmas	GA	1	OS	36.9	35.4	34.2	(126)
	Ray	GA	3	I	41.2	40.7	38.5	(102)
	Steinberg	GA	4	OS	45.1	47.1	44.8	(108)
	Center	GA	6	C	39.2	41.2	40.9	(143)
	Darden	GA	7	I	55.6	56.0	54.3	(132)
	Rowland	GA	8	I	57.7	53.7	48.2	(121)
	Johnson	GA	10	OS	52.3	51.7	48.5	(143)
1994								
	Beckworth	GA	1	C	18.3	18.2	17.8	(147)
	Overby	GA	3	C	30.0	31.1	29.0	(114)
	Yates	GA	4	C	41.9	41.8	38.0	(112)
	Jones	GA	6	C	35.2	36.0	35.3	(171)
	Darden	GA	7	I	45.5	44.5	45.4	(135)
	Mathis	GA	8	OS	34.9	34.4	30.5	(110)
	Deal	GA	9	I	57.3	57.1	57.2	(227)
	Johnson	GA	10	I	29.7	30.1	30.0	(160)
1996								
	Kaszans	GA	1	C	15.9	19.2	20.9	(102)
	Chafin	GA	3	C	25.0	30.9	27.3	(89)
	Coles	GA	6	C	36.9	41.1	40.0	(166)
	Watts	GA	7	C	38.5	37.4	41.0	(125)
	Wiggins	GA	8	C	34.7	38.1	34.8	(91)
	Poston	GA	9	C	34.0	33.5	34.6	(230)
	Bell	GA	10	C	32.0	31.9	29.2	(71)
	Stephenson	GA	11	C	33.2	33.5	34.7	(172)
1998								
	Coles	GA	6	C	22.7	25.2	26.9	(181)
	Williams	GA	7	C	38.5	37.5	41.4	(111)
	Cain	GA	8	C	21.6	22.9	26.8	(99)
	Littman	GA	11	C	26.2	28.5	28.7	(166)

Source: Charles S. Bullock, III, and Richard E. Dunn, "The Demise of Racial Districting and the Future of Black Representation,"*Emory Law Review* 48 (Fall): 1209 - 1253.
OLS = ecological regression; EI = district-level estimates from King's (1997) method for ecological inference; HP = racially homogenous precincts; N = number of homogeneous white precincts; I = incumbent; OS = open seat candidate; C = challenger.

TABLE 13

SUCCESS OF DEMOCRATIC STATEWIDE CANDIDATES, 1998 - 2004

Office	Race of Democrat	Democrat's Vote	Democrat's %	Outcome
1998				
Senator	W	791,904	45.2	Lost
Governor	W	941,076	52.5	Won
Lieutenant Governor	W	990,496	56.4	Won
Secretary of State	W	983,905	56.6	Won
Attorney General	B	883,932	50.9	Won
Commr. Of Agriculture	W	1,085,694	62.8	Won
Commr. Of Insurance	B	651,891	37.7	Lost
School Supt.	W	794,324	46.0	Lost
Commissioner of Labor	B	894,656	52.7	Won
PSC (Hargis)	W	746,081	44.6	Lost
PSC (McDonald)	W	638,054	49.6	Won
2000				
President	W	1,116,230	43.2	Lost
Senator	W	1,413,224	58.2	Won
PSC (Burgess)	B	1,201,346	52.3	Won
PSC (Boyd)	W	928,005	41.0	Lost
2002				
Senator	W	931,857	45.9	Lost
Governor	W	937,062	46.3	Lost
Lieutenant Governor	W	1,041,227	51.9	Won
Secretary of State	W	1,225,232	61.1	Won
Attorney General	B	1,093,734	55.6	Won
Commr. Of Agriculture	W	1,138,705	57.4	Won
Commr of Insurance	W	657,754	33.2	Lost
School Supt.	W	859,653	43.0	Lost
Commissioner of Labor	B	1,007,468	51.2	Won
PSC (Sizemore)	W	913,119	47.5	Lost
PSC (McDonald)	W	911,669	47.1	Lost
2004				
President	W	1,366,149	41.4	Lost
Senator	B	1,287,690	40.0	Lost
PSC (Barber)	W	1,217,443	39.5	Lost

TABLE 14

Senate	Population	Black Voting Age Population		BVAP	Black Registration	
District	Deviation	2001 Plan	Exiting Plan	Change	2001 Plan	Existing Plan
2	-3.12	50.31	60.30	-9.99	48.42	62.38
10	-4.96	64.14	70.30	-6.16	63.06	69.81
12	-4.15	50.66	55.30	-4.64	47.46	52.48
15	-4.67	50.87	61.60	-10.73	50.25	72.69
22	-4.85	51.51	63.10	-11.59	49.44	64.07
26	-4.39	50.80	62.30	-11.50	48.27	62.79
35	-1.76	60.69	75.60	-14.91	64.73	81.00
36	-4.73	56.94	60.00	-3.06	58.65	61.39
38	-4.76	60.29	76.30	-16.01	60.38	75.33
39	-4.98	56.54	54.40	2.14	59.79	59.46
43	-4.79	62.63	88.40	-25.77	63.11	89.14
55	-4.97	60.64	71.90	-11.26	60.99	73.07
Average		56.34	66.63	-10.29		

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Executive summary of the Bullock-Gaddie expert report on Louisiana:

By Edward Blum and Abigail Thernstrom

In 1964, before the passage of the Voting Rights Act, less than a third of Louisiana's voting-age blacks were registered to vote, but the percentage varied widely from one parish to another—ranging indeed from 93.8 percent in Evangeline Parish to only 1.7 percent in Tensas. By 1968, however, almost 59 percent of age-eligible African Americans were registered, and in some parishes the change was very dramatic.

This is the picture today, when just over 32 percent of the state's population is black, a proportion that ranks as the second highest in the country:

• The initial goals of the Voting Rights Act have long since been achieved in Louisiana. After each election, the US Bureau of the Census issues registration and voting data based on the self-reports of a sample of individuals. From 1980 to 2004, white and black self-reported registration rates were quite similar—both above 70 percent with the exception of only two years. Moreover, the percentage of the state's registrants who are black has equaled or exceeded the black share of the voting-age population. Black registration, in other words, is disproportionately high in relation to the eligible black population.

• In that same time period (1980 to 2004), blacks in Louisiana have reported higher registration rates than blacks outside the South. In fact, beginning in 1988, the difference has been at least ten percentage points, with the one exception of 1994. In 2002, Louisiana blacks were 16.5 percentage points more likely to report being registered than non-southern African Americans.

• The Census Bureau also surveys turnout (self-reported as a percentage of voting-age population). In presidential years in this same time period, at least 60 percent of voting-age blacks report casting a ballot; in 1992, the figure was 71.5 percent. At times, the proportion of actual voters who are black has been higher than the percentage of black registrants. Whites turned out at similarly high rates. White and black turnout differed little even in mid-term elections, when, by law, no state officers run and the general election is only for those seats for which no candidate got a majority of votes in the first round—two factors that depress turnout.

• In presidential years, Louisiana blacks always turn out at higher rates than in states outside the South. In 2000, the difference was 10 percentage points. That has generally been the case with midterm elections as well.

• Louisiana is one of the few states collects actual registration and turnout figures by race, but, unlike the self-reported (and thus less reliable) Census data, these figures cannot be used for making interstate comparisons. Nevertheless, they are informative.

They show, for instance, that since the passage of the Voting Rights Act, black registration increased five-fold, and by 2004, blacks were almost 30 percent of the registered electorate, a figure basically identical to the voting-age population.

• All of the above figures are remarkable, given the racial disparities in socioeconomic status and education.

• In 1969, Louisiana had only 65 African-American elected officials. By 2001 (the most recent figures), the number had risen to over 700, including U.S. Rep. William Jefferson who is now among the most senior black members of Congress, having first been elected in 1990.

• As in other states "covered" by the preclearance provision of the Voting Rights Act, redistricting politics have been driven by the need to acquire Justice Department approval for all districting maps. Assuming that the state needed to create as many safe black congressional seats as possible, in the early 1990s the legislature designed an ungainly district that stretched more than 600 miles across the state. Several maps later, in the wake of Supreme Court decisions raising concern about such radical racial gerrymandering, that district was dismantled. Black candidates running in majority-white constituencies have not been successful, but the primary explanation seems to be the high proportion of whites who are Republicans and the weakness of those African-American office-seekers. For instance, in 2004, a black candidate for the U.S. Senate only garnered five percent of the black vote in the Democratic primary.

• Since 1993, blacks have held more than 20 percent of the seats in both the state House of Representatives and Senate.

• In contested congressional elections in 1992 and 1994, in the second congressional district, which is almost 64 percent black, William Jefferson attracted approximately 90 percent of the African-American vote in the primary, but he also got just under half of the white vote, with the only white contestant receiving barely a quarter of the white vote. When blacks and whites differ in their candidate preferences, party affiliation appears to be a major factor.

• There have been twenty-six primaries and runoffs since 1995 for statewide office, and in only two of the nineteen contested primary races have a majority of black voters lined up in opposition to a majority of white voters. In those nineteen contests, the candidate preferred by most blacks won, giving Democrats control of most statewide constitutional offices. Two politically important examples are the gubernatorial elections of 1991 and 2003. In part, those outcomes reflect the fact that whites are less politically cohesive than blacks.

• Since 1996, Louisiana has had six primaries or runoffs for a U.S. Senate seat, and in every instance in which blacks cast a majority of their vote for a candidate, that

candidate has prevailed. But the African-American vote is not always cohesive, and while, in 2004, a black candidate ran for the Senate, he polled only 5 percent of the black vote. The white vote is often split; moreover, when the majority of whites support a candidate, that candidate will often lose.

• While roughly 30 percent of Louisiana's registered electorate is African-American, black candidates are Democrats in a state in which George W. Bush won 75 percent of the white vote in 2004. Growing numbers of whites vote for Republicans. It is important to note, however, that Louisiana whites are not as consistently Republican as in some other southern states and several Democrats have attracted white-majority support.

An Assessment of Voting Rights Progress in Louisiana
Prepared for the Project on Fair Representation
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At the very end of the 19th century, Louisiana adopted a series of requirements that had the effect of substantially reducing black participation. Beginning in 1898, voters had to register and be able to mark a secret ballot. Marking a secret ballot required that voters be literate, and Morgan Kousser reports that in 1900, 61 percent of the adult black males but only 18 percent of the white adult males were illiterate.[1] In the next year, the Bayou State adopted a poll tax and a literacy test. Kousser estimates that these restrictions reduced black turnout by 93 percent.[2] This reverses the trend of increasing black participation prior to the adoption of the restrictive provisions. Louisiana also adopted a white primary, but unlike other Deep South states did not seek to come up with ways to maintain it once the practice was struck down in *Smith v. Allwright*.[3]

Black Registration and Turnout

A generation after *Smith v. Allwright*, the U.S. Commission on Civil Rights reported official figures from the Louisiana Secretary of State that showed 31.6 percent of the state's voting age nonwhites registered to vote in the 1964 general election.[4] The range in the rates of black registration across the state varied widely reaching as high as 93.8 percent in Evangeline Parish but falling to only 1.7 percent in Tensas, 1.9 percent in

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[1] J. Morgan Kousser, *The Shaping of Southern Politics* (New Haven: Yale University Press, 1974), p. 55.

[2] *Ibid.*, p. 241.

[3] V.O. Key, Jr., *Southern Politics*, (New York: Adolph A. Knopf, 1949), p. 626.

[4] U.S. Commission on Civil Rights, *Political Participation* (Washington, D.C.: U.S. Government Printing Office, 1968), pp. 242-243.

Claiborne and 1.9 percent in West Feliciana parishes. The three parishes in which the smallest proportion of age-eligible African Americans were registered to vote had large black populations and two of them were majority black. In six parishes more than three-fourths of the age-eligible blacks were registered to vote prior to the Voting Rights Act.

Three years later, after the Voting Rights Act had been enforced for two years, 58.9 percent of the age eligible African Americans in Louisiana had signed up to vote. Contributing to these numbers where 24,130 nonwhites registered by federal examiners sent into nine parishes pursuant to the Voting Rights Act. In Caddo Parish where Shreveport is located, federal examiners enrolled almost 7,300 black voters and in Ouachita Parish they signed up almost 5,500.

Table 1 reports the changes in registration in the 13 parishes in which fewer than ten percent of the adult black population had registered in 1964. By 1967, the change had been dramatic in some parishes. West Feliciana Parish had 98 percent of its voting age blacks registered in 1967 up from less than 2 percent three years earlier. Contributing to this increase were 1,300 non-whites signed up by federal examiners. Table 1 also shows that the share of the black adult population registered in some other parishes such as Tensas, West Carroll, Franklin and Natchitoches were far more modest with fewer than a quarter of the adult African Americans on the registration rolls.

(See Table 1)

Table 2 shows figures on black and white registration as compiled by the U.S. Bureau of the Census. These figures come from self-reports collected through surveys conducted after each biennial election. The table reports the share of the voting age population that says it was registered at the time of the most recent election. Since these

data are self-reported, they almost certainly overestimate participation rates. However, despite this flaw, they are useful for making comparisons across time and across geographic areas.

As Table 2 shows, in Louisiana the self-reported registration rates are quite similar for African Americans and whites throughout the 24-year time period covered. In 1980, almost three-fourths of the whites surveyed and just under 70 percent of the African Americans said they were registered. Throughout the remainder of the 1980s, self-reported black registration figures slightly exceed those for whites. The 1992 figures are the last year in which a higher proportion of African Americans than whites claimed to be registered with the disparity being approximately six percentage points as 82.3 percent of the African Americans compared with 76.2 percent of whites report having registered to vote. Beginning with 1994, the rates of white registration have exceeded those for African Americans although in most years the differences have been relatively small. The largest disparities come in 1994 and 1998 when approximately 7 percentage points more whites than blacks claim to have registered to vote. In 2002, the difference drops to less than one percentage point, before expanding again to four points in 2004. Except for the extraordinarily low black registration rate in 1994, the share of the African American population that was registered has been at or above 70 percent. White registration figures have also been above 70 percent except for 1982 when only 67.5 percent of the whites surveyed reported being registered.

(See Table 2)

Throughout the time period, African Americans in Louisiana have reported higher registration rates than blacks outside the South. In the early 1980s, differences between

the two groups were less than ten percentage points. Beginning with 1988, the difference has been ten percentage points or more except in 1994 when the figure for Louisiana African Americans stood at 65.7 percent - - the lowest in the entire 24 years - - while for blacks outside the South, it was 58.3 percent. The most recent available figures show that in 2002, Louisiana blacks were 16.5 percentage points more likely to report being registered than were non-southern blacks. This difference is exceeded only in 1992 when a gap of almost 20 percentage points existed. The registration rate for Louisiana blacks exceeds 70 percent at the time of nine elections -- a percentage never achieved by African Americans outside the region.

Table 3 shows the shares of the Louisiana voting age population that reported having participated in the recent election when surveyed by the U.S. Bureau of the Census. In presidential election years, at least 60 percent of the African Americans of voting age report participating with the high figure coming in 1992 when black Louisianans helped carry their state for Bill Clinton and 71.5 percent reported voting. Despite higher levels of participation, blacks turned out at lower rates than whites in five of the seven presidential elections. Only in 1984 and 1992 did blacks vote at higher rates than whites. In the other years, white turnout exceeded African-American turnout with the largest difference occurring in 1988 when 67.5 percent of age-eligible whites and 61.5 percent of the African Americans voted. The only other instance in which the racial difference exceeded five percentage points came in 1980 when 65.6 percent of whites and 60.1 percent of blacks adults went to the polls. In the three most recent presidential elections, the differences ranged from 1.7 percentage points in 1996 to 3.2 percentage points in 2000.

(See Table 3)

Mid-term election turnout is invariably lower and in some instances much lower. In 1982 and 1994, fewer than one in three Louisiana African Americans of voting age bothered to cast ballots. At the high end, approximately 56 percent of Louisiana blacks reported voting in 1986 and 1990. Despite lower turnout rates, in half of the six off-year elections in Table 3, blacks reported voting at higher rates than do whites. In 1998, the disparity was ten percentage points and in 1982, while only 32 percent of the black surveyed say they voted, that is substantially more than the 23.6 percent of voting age whites who went to the polls. In 1990, the rate at which blacks said they voted exceeded that for whites by more than five percentage points. White self-reported turnout outpaced that for blacks in 1986, 1994 and 2002. In none of these three years was the white voting rate as much as five points greater than the black voting rate with the largest difference coming in 1994 when 35.6 percent of whites compared with 30.9 percent of blacks cast ballots. In 1986, the difference was only 1.7 percentages points as 57.5 percent of whites and 55.8 percent of African Americans voted.

One factor that accounts for the much lower turnout in many off-year elections when compared to presidential-year elections is that Louisiana does not choose its state officers in the off-year. Instead, Louisiana state elections come in odd-numbered years so that in the absence of a presidential contest, the highlight is likely to be a contest for the U.S. Senate or House of Representatives. A second factor that discourages participation is Louisiana's unique election law that has all candidates regardless of party compete in the initial contest. Candidates who poll a majority in the first round are elected. Consequently the general election includes only those offices for which no

candidate polled a majority forcing the top two vote getters to appear in a runoff. Most congressional contests feature incumbents and most incumbents attract majority support in the first round so that many Louisianans have no incentive to return to the polls at the time of the general election in non-presidential years since nothing remains to be decided.

When turnout rates among Louisiana African Americans are compared with those of blacks outside of the region, Table 3 shows that Louisiana blacks always vote at higher rates than do African Americans in the North and West in presidential years. The greatest difference came in 1992 when 71.5 percent of Louisiana blacks but only 53.8 of African Americans in the non-South participated. In 2000, the difference was ten percentage points. The smallest difference in a presidential year came in 1988 when 61.5 percent of Louisiana blacks along with 55.6 percent of African Americans from outside the South went to the polls.

In the two mid-term elections when turnout among Louisiana blacks fell below one-third, African Americans outside the region voted at substantially higher rates. The 1994 difference reached almost ten percentage points while in 1982 it exceeded 15 percentage points. In other mid-term election years, the turnout rate for blacks in Louisiana exceeded that outside of the region. In the two most recent mid-term elections, approximately 46 percent of the African Americans in the Bayou State reported voting compared with approximately 40 percent of blacks outside of the region.

The longitudinal figures from the Census Bureau do not show African American participation in Louisiana increasing over time. However, they do show that throughout the period, participation rates for the two races in Louisiana are quite comparable with a higher African-American than white participation rate some years. Tables 2 and 3 also

show that both registration and turnout among Louisiana African Americans usually exceeds that for non-southern blacks.

Louisiana is one of the states that maintains registration records by race which makes it possible to examine actual registration figures rather than rely exclusively on the self-reported registration figures collected by the Census Bureau. These materials appear in Table 4 and show that the number of black registrants has increased from 163,414 at the time that the Voting Rights Act was initially passed to more than 850,000 four decades later. This five-fold increase in black registration comes at a time when the total registration in the state increased by a little over 140 percent.

(See Table 4)

With black registration increasing at a far faster rate than total registration in the state, African-Americans now constitute a larger share of the total number of registrants. When the Voting Rights was enacted, fewer than one in seven registrants was black. By the first renewal in 1970, a fifth of the registrants were African American. When the most recent renewal took place in 1982, blacks made up almost a quarter of the registered electorate. The figures for 2004 show almost 30 percent of the registered electorate to the African American. This figure almost equals the black share of the voting age population estimated by the Census Bureau to be 30.3 percent in 2004. Table 4 provides further evidence that the barriers to African American registration that existed 40 years ago have long since come down.

Since 1998, Louisiana's secretary of state has released figures showing turnout by race. Table 5 reports that across the last eight years African Americans have cast between 18.7 and 30 percent of the votes in the often-determinative primaries. African

Americans constituted the largest share of the electorate in 1998 and have come close to matching the 29.9 percent of the electorate they constituted that year in the two most recent years when they accounted for more than 27 percent of the active electorate. The only year in which blacks cast less than 22 percent of the votes came in 2001 when only 157,000 primary votes were cast statewide. A comparison of turnout rates in Table 5 with registration rates in Table 4 indicates that in 1998, blacks turned out at higher rates than the rest of the electorate since they constituted a larger share of the electorate than the registrants. In other years, African Americans voted at lower rates than other Louisianans although in 2003 and 2004 the difference was small as the black share of registrants was less than three percentage points greater than the black share of the voters.

(See Table 5)

AFRICAN AMERICAN OFFICEHOLDING

In 1969, Louisiana had a total of 65 African-American officeholders. Of these eleven served at the parish (or county) level while 23 held municipal offices and nine served on local school boards. Within three years, the total number of black office holders in the state had grown to more than 100 and in another three years that figure had doubled to 237. In another three years, yet another 100 black officeholders had been elected bringing the totals to 75 in parish offices, 113 in holding city offices and almost 100 school board members. Thereafter growth slowed and black officials did not exceed 400 until the mid-1980s. By 1987, the state had more than 500 black officeholders as reported in Table 6. As of 2001, more than 700 African Americans had been elected in

Louisiana. This included 131 parish officers most of whom held the post of police juror (which corresponds with county commissioner elsewhere).

(See Table 6)

African Americans in Congress

William Jefferson is now among the most senior African-American members of Congress, having first been elected in 1990. He took over the black congressional district that had been represented by the Boggs family for 44 years.[5] Hale Boggs held the seat and upon the majority leader's death in an Alaskan plan crash his widow, Lindy, succeeded him. During the course of the Boggs family's almost half century of representation, this New Orleans district became increasingly African American reaching 59 percent black after the 1983 redistricting. During her last years in Congress, Lindy Boggs faced challenges from African Americans but her attentiveness to the constituency enabled her to turn aside those opponents. Upon her retirement, a large field of competitors emerged and Jefferson, a senior state senator, defeated Mark Morial, son of a New Orleans Mayor and future mayor himself, in a runoff election.

In Louisiana, like Georgia, and North Carolina, satisfying the demands of the U.S. Department of Justice drove the redistricting politics of the early 1990s. Unlike in the other two states where DOJ rejected a congressional map for having an insufficient number of majority-black districts, in Louisiana the message was sent in another form. DOJ rejected the plan for the Board of Elementary and Secondary Education that had

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[5] Hale Boggs won his first election to the House in 1940 but failed to be renominated for a second term. After serving in World War II, Bogs regained the congressional seat in 1946 and held it until his death in 1972.

only a single majority-black district.[6] The legislature assumed that a congressional plan that contained only one African-American district would also face rejection and consequently drew a second district.

The chair of the Senate redistricting committee, Cleo Fields, who, at 23, had become the youngest senator ever elected in the state, designed a heavily black district. His creation, which became known as the "Zorro" district because it somewhat resembled a capital Z, managed to string together the black-majority precincts in Shreveport, Monroe, Alexandria, Lafayette and Baton Rouge. This ungainly district reproduced in Figure 1 stretched more than 600 miles across the state running along the northern border with Arkansas almost to the Texas border and along the entire stretch of the state's Mississippi River border and then extending an arm as far as Lafayette in Cajun Country. This district was so far flung that the authors of the *Almanac of American Politics* speculated that, "A walk over the boundaries of this district might take as long as Lewis and Clark's journey through the Louisiana Purchase."[7] Fields, who had unsuccessfully

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[6] Ronald Keith Gaddie and Charles S. Bullock, III, "Voter Turnout and Candidate Participation Effects of Affirmative-Action Districting," in Robert Steed, Laurence Moreland, and Tod Baker, eds., *Southern Parties and Elections: Studies in Regional Change* (Tuscaloosa: University of Alabama Press, 1997); Richard L. Engstrom and Jason F. Kirksey, "Race and Representation Districting in Louisiana," in Bernard Grofman, ed., *Race and Redistricting in the 1990s* (New York: Agathon, 1998), pp. 237-241.

[7] Michael Barone and Grant Ujifusa, *The Almanac of American Politics*, 1994 (Washington, D.C.: *National Journal*, 1993), p. 534.

challenged a Republican incumbent two years earlier, took a commanding lead in the eight-candidate field with 48 percent of the vote in the first round. He romped to victory in the runoff with almost three-fourths of the vote to arrive in Congress just after his 30th birthday.

A challenge to Fields' 67 percent black Fourth District was awaiting trial when the Supreme Court ordered a hearing on North Carolina's twelfth district in *Shaw v. Reno*.[8] Even before the North Carolina panel could respond to the *Shaw* opinion, a three-judge panel in Louisiana threw out the Zorro district.[9] The legislature came up with a new plan that continued to link the black populations from Lafayette to Baton Rouge and on up to the northwest corner to Shreveport but did so in a more direct fashion that produced a district 250 miles long. The new Fourth District did not tiptoe along the state's eastern and northern borders but instead took a diagonal shot up from Baton Rouge to Shreveport as shown in Figure 1. The same plaintiffs challenged this district for being drawn primarily on the basis of race. Although the Supreme Court declined to rule on this appeal because none of the plaintiffs lived in the new district and therefore, the court found that they lacked standing, the state developed another map.[10]

The third map eliminated the state's second majority-black district. It maintained the two-thirds black New Orleans district but dismantled Fields' Fourth District. Rather than confront a white Republican incumbent, in a more than 70 percent white district, Fields retired from Congress and made an unsuccessful bid to become governor.

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[8] *Shaw v. Reno*, 509 U.S. 630 (1993).

[9] *Hays v. Louisiana*, 936 F. Supp. 369 (W.D. La.1996)

[10] *Hays v. Louisiana,* 936 F. Supp. 369 (W.D. La.1996)

The post-2000 census plan maintained the New Orleans district at 64 percent African American. No other Louisiana district currently has a black majority in its population. Jefferson has successfully confronted subsequent challenges by African-American candidates.

Other efforts by African Americans to win congressional seats have not met with success. Faye Williams lost runoffs to Republican Clyde Holloway for central Louisiana's 8th congressional district in 1986 and 1988. Most recently, in 2004, Arthur Morrell sought the open U.S. Senate seat vacated by Democrat John Breaux. He pulled an estimated 5% of the African-American vote, finishing well behind white Democrats Chris John and John Kennedy among black voters, and far behind primary winner John Vitter, who prevailed without a runoff.

Black Members of the State Legislature

The first African American to be elected to the Louisiana legislature since Reconstruction won a seat in 1966. With the drawing of new districts in the early 1970s, the number of House members jumped to eight and then gradually increased during the course of that decade. By 1990, 14 percent of the members of the lower chamber were African American. The redistricting done in 1991 created 25 districts in which most registered voters were black.[11] Later that year, blacks won 23 of these districts which produced the more than a 50 percent increase in black House representation shown in

[11] Engstrom and Kirksey, *op. cit.,* pp. 234-235.

Table 7. Since 1993, the black proportion in the House has fluctuated but always remained above 20 percent.

(See Table 7)

The Senate has had black members since 1971. As in the House, the numbers initially grew slowly and did not reach ten percent of the 39-member chamber until 1985. The race-based redistricting of the early 1990s demanded by the Department of Justice resulted in nine majority-black districts eight of which elected an African American in 1991. At the beginning of the new century, African Americans held 23 percent of the Senate seats.

PSC and BESE

In addition to the legislative chambers and the congressional delegation, African Americans have won seats on two other collegial bodies elect members from single-member districts. The Public Service Commission (PSC) has five districts and the Board of Elementary and Secondary Education (BESE) elects eight members from single-member districts.[12]

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[12] The BESE was created in the 1973 constitutional reform as part of an effort to provide separate administration for primary and secondary education, and higher education respectively. The board has eleven members, eight elected from single-member districts and three at-large members appointed by the governor. Until 1991, elected BESE members shared the same district lines as congressional incumbents, but the reduction of the Louisiana congressional delegation by one in reapportionment led to the crafting of distinct BESE districts.

In 1998, PSC District 3 elected Irma Dixon, a black female, in a runoff over incumbent white Democrat John Schwegmann. The district encompassed most of the majority-black congressional district 2 before continuing up the Mississippi River into the Holy Name parishes below Baton Rouge. (Dixon would later wage an unsuccessful challenge to African-American Rep. Bill Jefferson in congressional district 2). In 2004, Dixon was eliminated from a runoff by African-American candidates Lambert Bossiere III and former congressman Cleo Fields. Bossiere subsequently bested Fields in the runoff.

The eight BESE districts have elected as many as two African-Americans at a time. In 1999, the Orleans Parish-based 2d BESE district elected black Keith Johnson. Johnson was defeated for reelection in a 2003 runoff by another African-American candidate, Louella Givens. In the central-Louisiana BESE district 8, African-American Linda Johnson bested two other black candidates without benefit of a runoff and was returned to the BESE in 2003.

Statewide Candidacies

In 1995, Cleo Fields joined the multi-candidate gubernatorial field to succeed the tainted Edwin Edwards who had dominated Pelican State politics for a quarter of a century. Under Louisiana's unique election law, all candidates compete in an initial heat regardless of party rather than running for a party nomination as in most other states. No candidate got a majority, and Fields made it into the runoff against conservative white Republican Mike Foster, the grandson of a former governor.[13] While Democratic

[13] Foster, a state legislator, changed his political party the day of filing.

candidates had a combined majority of the vote in the initial balloting, Fields could not unite the followers of his fellow partisans.[14] In the closing days of the dog-eat-dog campaign leading up to the initial vote, the two top Democrats, Fields and Mary Landrieu (the daughter of a New Orleans mayor who currently serves in the U.S. Senate) sniped at one another as they sprinted toward the cut off point for the runoff. In the critical fight to advance to the runoff, Fields edged out Landrieu by 9,000 votes.

Jealousies among leading black politicians also hampered Fields. New Orleans Mayor Marc Morial did not throw his full support behind Fields but rather endorsed both the former member of Congress as well as State Treasurer Landrieu.[15] After losing the runoff, Fields continued to harbor ill-feelings toward Landrieu which almost sabotaged her 1996 Senate race where she eked out a victory of less than 6,000 votes in the runoff.

Fields polled 38 percent of the vote in the runoff against Foster. The Mason-Dixon exit poll indicated that Fields took just 16 percent of the white vote. Further, 45 percent of self-identified white liberals reported voting for Foster, who outspent Fields by more than 8:1 in the runoff. Black voters did constitute 31 percent of the turnout in the runoff primary. According to the Baton Rouge *Advocate's* Scott Dyer, "Regardless of whether anyone wants to admit it, the politics of race is the trump card in the 1995 governor's election. When one candidate is only polling 3 percent to 4 percent of Louisiana's black voters and the other candidate is only polling from 13 percent to 18

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[14] Fields had garnered 19% of the vote to trail Republican Foster with 26% and to lead former Governor Buddy Roemer who had 16%.

[15] Michael Barone and Grant Ujifusa, *The Almanac of American Politics, 1998* (Washington, D.C.: *National Journal*, 1997, p. 621.)

percent of the state's white voters, it's kind of silly for anyone to contend that racial politics are not a factor."[16] Four years later, in a multi-candidate primary for governor, African-American congressman Bill Jefferson polled 30% of the vote against Mike Foster, who was reelected, again with 62% of the vote. Polling data indicated a similar racial structure to the vote in 1999 as in 1995.

Cleo Fields and Bill Jefferson are the only serious black candidate to have run for governor in Louisiana. Still, the early 1990s witnessed two racially-charged elections in the Bayou State. In both the 1990 Senate election and the 1991 gubernatorial election, the leading challenger was David Duke, a former leader of the Ku Klux Klan and a longtime, out-spoken opponent of civil rights for African Americans. Duke lost both of these efforts but managed 44 percent of the vote against long-time incumbent Senator Bennett Johnston. The next year, Duke finished only two percentage points behind Edwin Edwards in the first round of the gubernatorial primary as both took about a third of the vote. In the runoff, with the Republican national establishment openly supporting the Democrat Edwards, Duke, who had served a term as Republican legislator, was held to 39 percent of the vote. While Duke lost both contests, he was the preference of most white voters in the state.[17]

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[16] Scott Dyer, 1995. The politics of race is 1995 trump card. *The Advocate*, November 9, page B9.

[17] See, for a discussion of the David Duke phenomenon, John C. Kuzenski, Charles S. Bullock III, and Ronald Keith Gaddie, eds., *David Duke and the Politics of Race in the South* (Nashville: Vanderbilt University Press, 1995) and Douglas Rose, ed., *David Duke and the Politics of Race* (Chapel Hill: UNC Press, 1993).

RACIAL VOTING PATTERNS

Table 8 presents estimates of racial voting behavior in contested congressional elections from 1992 and 1994. In those elections, African American candidates usually faired well among white voters although they have much less drawing power among white than black electors. For example, in the first round primary in the Second District in 1992, William Jefferson, an African American was the leading candidate among both black and white voters. He attracted approximately 90 percent of the African American vote but just under half of the white vote. However a second African American candidate drew another 25 percent of the white vote so the only white candidate in the contest polled barely a quarter of the white vote.

(See Table 8)

In the Fourth District, Cleo Fields won the African American vote with approximately 60 percent support and finished a close second among white voters with 22.5 percent of the vote estimated using ordinary least squares. That vote share was only six tenths of a point less than the leading candidate among white voters. In the runoff for that position between two African American candidates, Fields took commanding majorities among both black and white voters.

In the 1994 first primary, Jefferson took the vast majority of the black vote and ran a close second among white voters. In the Fourth District in 1994 Fields faced a single opponent and while the incumbent attracted almost all the black vote, he failed to get even one- third of the white vote.

To some extent, partisanship may be a factor influencing vote choices. For example, in 5th District in 1992, the leading Republican candidate, Jim McCrery polled a majority of the white vote while Jerry Huckaby, the leading Democrat took approximately 80 percent of the black vote. In the runoff in that district, polarization was even more pronounced with Huckaby winning approximately 90 percent of the black vote while McCrery took more than 70 percent of the white vote. Similarly, in 1992 in the 6th District, the two Republicans, Richard Baker and Clyde Holloway combined for approximately 70 percent of the white vote. Ned Randolph, a Democrat, took the bulk of the African American vote.

Analyses of black and white voter preferences in US House primaries and runoffs since 1998 appear in Table 9.[18] The African-American candidate won half of these 22 primaries and runoffs and in six contests a majority of the white and black voters supported the same candidates. In nine contests most black voters supported an unsuccessful candidate; in the two remaining elections, the African-American vote split so that no candidate attracted as much as 40 percent of the black vote. In all nine elections in which most blacks supported a loser, the white vote coalesced behind a Republican while in seven of these contests most blacks voted for a Democrat and in two other cases most blacks backed an Independent. In one contest in which the black vote

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[18] Analysis of the district 2 primary, won by black incumbent Bill Jefferson, is omitted due to data problems encountered in merging Orleans Parish precinct data with state election board returns. Inconsistent precinct identifiers for Orleans Parish prevented merging about half of all precinct election data with precinct registration and turnout data.

split, the OLS analysis estimates that the winner, David Vitter, polled 31.5 percent of the black vote, not even a percentage point less than the estimated black support for the candidate who drew the most African-American support.

Further support for the proposition that party is a major factor when African-American and white voters differ in their preferences can be gleaned from Table 9. In 2002, Rodney Alexander won as a Democrat in the Fifth District where he polled almost all of the black vote in the runoff after getting three-fourths of the black vote in the primary. Alexander won despite losing the white vote to his Republican opponent by a 3:2 margin. Just before the filing period in 2004, Alexander switched parties. In his reelection bid, Republican Alexander managed barely a fifth of the African-American vote while sweeping three-fourths of the white vote.

(See Table 9)

PSC and BESE

In half of the twelve primary and runoff contests for the BESE, majorities of black and white voters preferred opposing candidates. Table 10 reports these elections to be the initial BESE primaries in districts 3 and 7 in 1999, and the BESE runoff in district 6 on 1999, and the 2003 runoffs in districts 1, 2, and 6. In two of these six contests the candidate preferred by African-American voters prevailed – in the district 6 runoff in 1999 and in the district 2 runoff in 2003. None of the four cases where the black-preferred candidate failed involved a black candidate, and none occurred in a majority-black constituency. Partisanship is less important in the BESE contests with most blacks rallying to the Democrat while most whites supported the Republican in only a third of

the contests. Three other primaries (district 6 in 1999 and 2003 and district1 in 2003) saw most blacks back a Democrat who managed only about a third of the white vote as two Republicans split the bulk of the white support.

(See Table 10)

Table 11 examines nine Public Service Commission contests. Black and white voters give majority support to opposing candidates in six of those contests: the district 3 runoff in 1998, the district 2 primary in 2000, the district 1 primary and the district 5 runoff in 2002, and the district 3 primary and runoff in 2004. In two cases the minority-preferred candidate prevails (district 3 in 1998 and district 5 in 2002), and in the 2004 district 3 primary the minority- and white-preferred candidates (both black) both advanced to a runoff where the white-preferred candidate prevailed in a majority-black district. In none of the PSC contests did whites support a Republican while blacks voted for a Democrat.

(See Table 11)

Statewide Constitutional Offices

There have been twenty-six statewide primaries and runoffs held since 1995. The open primary system encourages fractionalization of the electorate, an effect readily visible in Table 12. In only two of the nineteen contested first primaries for statewide constitutional office in Table 12, have a majority of black voters lined up in opposition to a majority of white voters (2003 for attorney general and 1999 for governor). In eight contests one or both racial groups exhibited no majority preference. Of seven runoffs, two produced opposing racial majorities, the 1995 and 2003 gubernatorial runoffs. Of

the total of 26 statewide primaries and runoffs since 1995, only four result in majority preferences for both racial groups in opposition, and in just two cases does the candidate preferred by the African-American electorate fail (the 1995 gubernatorial runoff and the 1999 gubernatorial primary). However, these two cases are the two major instances of African-American candidates running for – and losing – statewide office in Louisiana. (An African American competed in the six-candidate field for lieutenant governor in 2003 but managed less than five percent of the black vote, most of which lined up behind the successful candidate.)

(See Table 12)

Despite the losses of Cleo Fields and William Jefferson in the decisive gubernatorial contests of 1995 and 1999, in 19 of the 26 contests, the candidate who drew majority support from black voters won and in a 20th case, the 1995 gubernatorial primary, the choice of most African Americans advanced to the runoff. In another four contests, African-American voters were not cohesive.

White voters achieved cohesion less often than did African Americans. In 16 contests most whites backed the winning candidate while in eight elections the white vote was not cohesive. In two contests (the 2003 gubernatorial runoff and the race for attorney general that year, the white preference lost. Thus the number of instances in which the white majority preference lost equals the number of contests in which the majority black preference lost.

Partisanship is less significant in these statewide contests than in the congressional elections presented in Table 9. Fourteen of the contests saw majorities of both African-American and white voters rally behind one candidate so in most of these

elections party did not separate voters by race. However in all four elections in which most blacks favored one candidate while most whites threw their support behind an alternative, most blacks preferred the Democrat while most whites backed a Republican. In the remaining eight contests, one or both racial groups did not display cohesion.

United States Senate Elections

Since 1996, Louisiana has had six primaries or runoffs for the U.S. Senate. In all four instances in Table 13 in which African-Americans cast a majority of their votes for a candidate, that individual succeeded. In the other two contests, the American-American vote was not cohesive with 42.4 percent of the African-American vote going to Richard Ieyoub in the 1996 primary while in 2004, the black vote divided almost evenly between two contenders each of whom got almost 40 percent. The only African-American candidate to seek the Senate polled just five percent of the black vote in 2004.

(See Table 13)

Cohesion eluded white voters in two contests. Of the four elections in which most whites settled on a candidate, their choice won only twice. In the 1996 and 2002 runoffs, most African-Americans supported the winner while most whites preferred the loser.

The decisive 1996 and 2002 contests were the only ones in which most black voters opposed most whites and in both instances, the black preference won. In these two elections, most African Americans opted for the Democrat while the bulk of the white vote went to the Republican.

CONCLUSION

The initial goals of the Voting Rights Act have long since been achieved in Louisiana. African-Americans register and vote in large numbers and have done so for years. The percentage of blacks among Louisiana registrants equals or exceeds the African-American share of the state's voting age population. The share of the voting electorate that is African American has at times exceeded its share of the registrants and in other years has been only slightly less than the black share of registrants.

Since Democrats continue to hold most statewide constitutional offices, blacks see their choices win important offices more often than not. In several highly visible elections, the black preference bested the white choice, as in the gubernatorial elections of 1991 and 2003 and the Senate elections of 1990, 1996 and 2002.

While some black preferences defeat the white choice, this pattern does not extend to contests in which the black preference is an African American. In the two statewide contests featuring a competitive black candidate, the decisive 1995 and 1999 gubernatorial elections, the African American came up short despite polling 82 percent of the black vote. For a statewide candidate attracting just over 80 percent of the Louisiana African-American vote to win, it would be necessary to get at least 37.1 percent of the white vote, assuming 30 percent of all turnout is African-Americans. Fields managed only 13 percent of the white vote in 1995 and Jefferson, running against an incumbent, fared even worse with less than ten percent of the white vote.

The Fields and Jefferson defeats fit a pattern in which the racial cleavage parallels a partisan divide. Especially in congressional elections, but also in some statewide contests, whites line up behind a Republican while blacks go with the Democrat. A

Democratic candidate who is an African American may provide a catalyst to the growing trend of race and party moving along parallel lines. While blacks frequently give 80 percent or more of their votes to a Democratic candidate, a comparable level of white cohesion occurs only when an African American has made it to the runoff and the white vote goes to the African American's Republican opponent.

Extensive African-American political participation has come to provide critical support to Democratic candidates as growing numbers of whites vote for Republicans. While the white vote has been drifting toward the GOP, Louisiana whites are not as consistently Republican as in some other southern states and several Democrats have attracted the support of most whites. Although it has not prevented movement toward the GOP, Edwin Edwards' distinctive electoral format adopted 30 years ago has achieved his goal of retarding the erosion of support for the Democratic Party.

TABLE 1

OFFICIAL REGISTRATION BY RACE IN LOUISANA, IN 1964-1967

County	Nonwhite Reg. 1964	White % Reg. 1964	NonWhite % Reg. 1964	White % Reg. In 1967
Bossier	599	63	8.7	74.6
Catahoula	236	81.5	1.9	93.3
East Carroll	136	64.8	3.3	100
East Feliciana	182	38.7	3	50.7
Franklin	284	84.2	6.4	99
Madison	294	74	5.7	100
Morehouse	491	74.6	6.8	89.7
Plaquemines	96	88.3	3.3	100
Red River	96	100	4.4	100
Richland	381	74.8	8.3	93.8
Tensas	60	94.2	1.7	100
West Carroll	76	66.1	5.5	92.8
West Feliciana	85	47.8	1.9	100

Source: Louisiana Board of Elections

TABLE 2

REPORTED REGISTRATION BY RACE IN LOUISIANA AND OUTSIDE THE SOUTH, 1980-2004

	1980	1982	1984	1986	1988	1990	1992	1994	1996	199
Louisiana										
Black	69	68.5	74.8	71.9	77.1	72	82.3	65.7	71.9	69.
White	74.5	67.5	73.2	71.4	75.1	74.1	76.2	72.7	74.5	75.
Non-South										
Black	60.6	61.7	67.2	63.1	65.9	58.4	63	58.3	62	58.
White	69.3	66.7	70.5	66.2	68.5	64.4	70.9	65.6	68.1	63.
Source:	Various post-election reports by the U.S. Bureau of the Census									

TABLE 3

REPORTED TURNOUT BY RACE IN LOUISIANA AND OUTSIDE THE SOUTH,

1980-2004

	1980	1982	1984	1986	1988	1990	1992	1994	1996	199
Louisiana										
Black	60.1	32	66.4	55.8	61.5	55.9	71.5	30.9	60.9	4
White	65.6	23.6	64.7	57.5	67.5	50.2	68.3	35.6	62.6	35.
Non-South										
Black	52.8	48.5	58.9	44.2	55.6	38.4	53.8	40.2	51.4	40.
White	62.4	53.1	63	48.7	60.4	48.2	64.9	49.3	57.4	45.

Source: Various post-election reports from the U.S. Bureau of the Census

TABLE 4

BLACK VOTER REGISTRATION IN LOUISIANA, 1965-2004

	Total Voter Registration	Black Registration (La. Board of Registration)	Black Percentage of Registered Voters (La. Board of Registration)
1965	1,190,122	163,414	13.7
1966	1,281,919	238,356	18.6
1967	1,285,933	245,275	19.1
1968	1,411,071	279,468	19.8
1969	1,422,900	291,547	20.5
1970	1,438,727	298,054	20.7
1971	1,633,181	347,098	21.3
1972	1,704,890	397,158	22.3
1973	1,712,850	380,490	22.2
1974	1,726,693	391,666	22.7
1975	1,798,032	408,696	22.7
1976	1,866,117	420,697	22.5
1977	1,787,031	413,178	23.2
1978	1,821,026	429,231	23.6
1979	1,831,507	431,196	23.5
1980	2,015,402	465,005	23.0
1981	1,942,941	454,988	23.4
1982	1,965,422	474,238	24.1
1983	1,968,898	476,618	24.2
1984	2,133,363	533,526	25.0
1985	2,175,264	550,225	25.3
1986	2,141,263	549,916	25.7
1987	2,139,861	551,263	25.8
1988	2,190,634	572,133	26.1
1989	2,113,867	552,781	26.2
1990	2,121,302	561,379	26.5
1991	2,103,334	569,603	27.1
1992	2,241,949	626,678	27.9
1993	2,294,043	636,018	27.7
1994	2,257,080	628,578	27.8
1995	2,400,086	689,046	28.7
1996	2,518,896	724,831	28.8
1997	2,612,983	755,001	28.9
1998	2,678,337	771,506	28.9
1999	2,713,859	783,294	28.9
2000	2,771,477	802,069	28.9
2001	2,750,124	798,526	29.0
2002	2,797,471	817,527	29.2
2003	2,766,081	812,578	29.4
2004	2,875,232	852,675	29.7

Sources: Data for 1965 to 1979 were taken from James Bolner, ed., Louisiana Politics: Festival in a Labyrinth (Baton Rouge: Louisiana State University Press, 1982), p. 305. Data for 1980 to 1996 were provided by the Office of the Louisiana Commissioner of Elections, Baton Rouge. Figures from 1965-1996 appear in Wayne Parent and Huey Perry, "Louisiana: African-Americans, Republicans and Party Competition," in *The New Politics of the Old South* 3rd. ed., Charles S. Bullock, III and Mark Rozell, eds. (Latham, MD: Rowman and Littlefield, 2006). Figures for 1997 & 1998 were taken from the State of Louisiana Department of Elections and Registration , the 1999-2004 figures were taken from the Louisiana Secretary of State's web site: sos.louisiana.gov/stats/Post_Election_Statistics/Statewide.

TABLE 5

AFRICAN-AMERICAN PARTICIPATION IN LOUISIANA PRIMARIES 1998-2005

Year	Total	White	Black	% Black
1998	990,239	680,093	296,509	0.299432
1999	769,710	612,214	174,063	0.226141
2000	1,776,133	1,262,905	472,211	0.265865
2001	157,137	126,031	29,475	0.187575
2002	1,267,225	913,259	328,443	0.259183
2003	1,415,641	1,012,125	371,274	0.262266
2004	1,956,673	1,363,396	531,744	0.271759
2005	128,703	91,076	35,698	0.277367

*Figures from 4/02/2005 the preceding figures are from November of each year.

Source: http://sos.louisiana.gov/stats/Post_Election_Statistics/Statewide

TABLE 6

NUMBER OF AFRICAN-AMERICAN ELECTED OFFICIALS IN LOUISIANA 1969-2001

Year	Total	Parish	Municipal	School Board
1969	65	11	23	9
1970	64	5	29	9
1971	74	10	27	13
1972	119	31	28	23
1973	130	29	28	29
1974	149	32	42	41
1975	237	45	69	76
1976	250	51	65	75
1977	276	60	85	78
1978	333	75	113	93
1980	363	86	131	91
1981	367	81	134	94
1984	438	106	149	112
1985	475	116	159	123
1987	505	120	181	121
1989	521	117	190	127
1991	551	116	189	142
1993	636	139	206	151
1995				
1997	646	136	226	134
1999	714	138	259	159
2001	705	131	256	161

Source: Various volumes of the *National Roster of Black Elected Officials* (Washington, D.C: Joint Center for Political Studies.)

TABLE 7

RACIAL MAKEUP OF THE LOUISIANA LEGISLATURE, 1965-2005

Year	LA Senate	LA House	% Black in Senate	% Black in House
1965	0	0	0	0
1967	0	1	0	1.0
1969	0	1	0	1.0
1971	1	1	2.6	1.0
1973	1	8	2.6	7.6
1975	1	8	2.6	7.6
1977	1	9	2.6	8.6
1979	1	9	2.6	8.6
1981	2	10	5.1	9.5
1983	2	11	5.1	10.5
1985	4	14	10.3	13.3
1987	5	14	12.8	13.3
1989	5	15	12.8	14.3
1991	4	15	10.3	14.3
1993	8	24	20.5	22.9
1995	8	22	20.5	21.0
1997	9	24	23.1	22.9
1999	9	22	23.1	21.0
2001	9	22	23.1	21.0
2003	9	23	23.1	21.9
2005	9	23	23.1	21.9

TABLE 8

RACIAL VOTING PATTERNS IN LOUISIANA CONGRESSIONAL ELECTIONS

Candidate	Race	White Voters OLS	White Voters HP	Black Voters OLS	Black Voters HP
1992, First Round					
District 2					
Irvin	B	25.2	24.6	9.0	8.4
Jefferson	B	48.6	49.3	90.0	89.0
Johnson	W	26.2	26.1	1.1	2.3
District 4					
Fields	B	22.5	17.8	60.8	59.0
Hall	B	4.3	5.6	0.9	1.1
Jones	B	4.4	7.2	18.5	18.2
Myers	W	23.1	21.4	0.0	0.7
Ross		3.1	3.3	1.7	1.6
Shyne		15.9	18.2	8.3	9.2
Ventre	W	18.6	16.7	1.1	1.5
Williams		8.1	9.9	8.8	8.7
District 5					
Huckaby	W	20.0	21.1	80.8	74.7
Knox		2.0	2.0	3.2	3.5
McCrery	W	51.4	51.0	2.1	8.2
Milton		1.1	1.4	5.8	5.9
Thompson		25.4	24.6	8.1	7.7
District 6					
Baker	W	37.3	37.2	- 6.2	7.6
Holloway	W	35.1	34.5	48.4	14.5
Randolph		27.6	28.3	57.8	77.9
1992, Runoff Election					
District 4					
Fields	B	64.7	63.3	79.1	78.5

Jones	B	35.3	36.7	20.9	21.5

Candidate	Race	White Voters OLS	White Voters HP	Black Voters OLS	Black Voters HP
District 5					
Huckaby	W	27.2	28.4	92.2	88.0
McCrery	W	72.8	71.6	7.8	12.0
District 6					
Baker	W	52.1	53.1	34.1	65.3
Holloway	W	47.9	46.9	65.9	34.7
1994, First Primary					
District 1					
Livingston	W	83.6	83.6	48.0	57.1
McNeir		10.3	10.4	32.9	29.0
Simmons		6.1	6.0	19.1	13.9
District 2					
Jefferson	B	42.2	41.8	96.9	95.1
Lawrence		7.7	8.0	1.0	1.5
Lehman	B	5.2	5.5	1.6	1.8
Namer		44.9	44.6	0.5	1.7
District 3					
Accardo		25.3	25.2	15.1	16.7
Tauzin	W	74.7	74.8	84.9	83.3
District 4					
Fields	B	31.4	32.5	98.8	96.8
Slocum		68.6	67.5	1.2	3.2
District 5					
Kidd		7.9	9.0	56.6	55.6
McCrery	W	89.2	88.2	33.0	34.7

Simmons	2.8	2.9	10.4	9.7

Candidate	Race	White Voters OLS	White Voters HP	Black Voters OLS	Black Voters HP
District 6					
Baker	W	84.5	84.5	50.9	56.6
Ward		15.5	15.5	49.1	43.4
District 7					
Ceasar		5.9	6.4	19.3	21.8
Hayes	W	51.1	51.9	67.5	67.7
Holloway	W	43.0	41.8	13.2	10.4

Sources: Ronald E. Weber, "Turnout, Participation, and Competition in 1992 Louisiana Congressional Elections" (August 16, 1993) and Exhibit 4 for *Hays v. Louisiana,* n.d..

TABLE 9

RACIAL VOTING PATTERNS IN LOUISIANA CONGRESSIONAL ELECTIONS, 1998-2004

Candidate	Race	White Voters OLS	White Voters HP	Black Voters OLS	Black Voters HP
1998					
District 6					
Baker-R	W	65.9	67.3	1.8	6.3
McKeithen-D	W	34.1	32.7 (n=196)	98.2	93.7 (n=57)
2000					
District 1					
Armato-D	W	10.1	----	88.1	----
Deaton -D	W	3.6	----	24.9	----
Rosenthal-I		1.3	----	4.7	----
Simanonok-I		1.1	----	5.2	----
Vitter-R	W	84.0	----	<0	----
District 3					
Albares-I		20.2	----	59.7	----
Bourque-I		4.0	----	8.1	----
Rosenthal-I		3.0	----	9.1	----
Tauzin -R	W	58.2	----	23.1	----
District 4					
Green-D	W	11.8	----	63.6	----
McCrery-R	W	83.4	----	29.7	----
Skains-I	W	2.4	----	2.9	----
Taylor -I	W	2.4	----	3.8	----
District 5					
Beall-D	W	15.6	----	64.2	----
Cooksey-R	W	79.7	----	20.0	----
Dumas-I	W	2.4	----	5.7	----
Melton -I	W	2.4	----	10.0	----

Candidate	Race	White Voters OLS	White Voters HP	Black Voters OLS	Black Voters HP
2000					
District 6					
Baker-R	W	80.7	----	24.3	----
Rogillio-I	W	17.0	----	73.7	----
Wolf-I	W	2.4	----	1.9	----
District 7					
Harris-I	W	17.5	----	7.7	----
John-D	W	82.5	----	92.3	----
2002					
District 1					
Hawxhurst-I	W	2.8	2.4	25.8	13.0
Monica-R	W	11.2	10.5	32.3	27.8
Namer-R	W	3.7	3.6	10.5	28.7
Vitter-R	W	82.4	83.6	31.5	56.3
			(n=270)		(n=3)
District 2					
Clement-I		5.6	6.5	2.6	1.2
Dixon-D	B	36.6	23.6	14.6	20.3
Hunt-D		6.7	5.0	1.4	2.1
Jefferson-D	B	9.8	37.2	78.5	75.2
Sullivan-R	W	41.5	28.1	2.9	1.2
			(n=16)		(n=135)
District 3					
Beier-I	W	6.8	7.3	17.9	18.2
Iwancio-I	W	4.1	3.9	10.6	10.0
Tauzin -R	W	89.1	88.9	71.4	71.8
			(n=219)		(n=22)
District 4					
Jacobs-I	W	2.1	1.9	2.0	2.9
McCrery-R	W	78.8	79.1	57.7	46.6
Milkovich-D	W	19.1	19.0	40.3	50.6
			(n=211)		(n=40)

Candidate	Race	White Voters OLS	White Voters HP	Black Voters OLS	Black Voters HP
District 5					
Alexander-D	W	14.7	14.1	77.7	74.5
Barham-R	W	20.5	21.9	6.8	4.5
Fletcher-R	W	30.0	32.1	1.2	5.3
Holloway-R	W	31.2	28.3	3.3	5.2
Melton -R	W	1.0	8.9	8.6	7.5
Mouser-I	W	0.5	0.4	0.9	1.1
Wright-R	W	2.1	2.2	1.5	1.9
			(n=299)		(n=66)
District 5 Runoff					
Alexander-D	W	40.2	34.3	98.3	94.9
Fletcher-R	W	59.8	65.7	0.7	5.1
			(n=299)		(n=66)
District 6					
Baker-R	W	88.0	88.6	67.1	75.1
Moscatello-I	W	12.0	11.4	32.9	24.9
			(n=173)		(n=47)
District 7					
John-D	W	84.8	84.7	98.9	96.5
Valletta-I	W	15.2	15.3	1.1	3.5
			(n=211)		(n=26)
2004					
District 1					
Armstrong-D	W	5.1	4.6	35.8	24.9
Jindal-R	A	81.8	84.0	5.1	21.8
Mendoza-D	H	3.7	3.3	18.8	18.9
Rogers-R	W	2.8	2.5	0.6	5.0
Watts-D	W	2.8	2.5	19.0	15.3
Zimmerman-D	W	3.7	3.1	15.1	14.0
			(n=260)		(n=3)
District 2					
Jefferson-D	B	51.1	44.7	99.6	96.0
Schwertz-R	W	48.9	55.3	0.4	4.0
			(n=10)		(n=136)

Candidate	Race	White Voters OLS	White Voters HP	Black Voters OLS	Black Voters HP
District 3					
Baldone-D	W	9.7	8.9	13.7	13.9
Caccioppi-D	W	0.6	8.0	10.8	9.9
Chiasson-R	W	0.3	3.2	6.9	6.9
Melancon-D	W	16.7	17.2	57.3	54.0
Romero-R	W	26.2	23.8	6.7	6.7
Tauzin -R	W	37.8	38.9	4.7	7.1
			(n=197)		
(n=21)					
District 3 Runoff					
Melancon-D	W	41.0	40.0	97.8	90.6
Tauzin -R	W	59.0	60.0	2.2	9.4
			(n=197)		(n=21)
District 5					
Alexander-R	W	74.7	73.4	20.7	17.6
Blakes-D	W	8.7	9.3	71.4	73.3
Scott-R	W	16.5	17.3	7.9	9.1
			(n=327)		(n=90)
District 6					
Baker-R	W	86.7	86.0	22.5	28.0
Craig-D	W	8.4	9.7	56.3	56.3
Galmon-D	W	4.9	4.3	21.2	15.7
			(n=157)		(n=49)
District 7					
Boustany-R	W	47.5	47.2	<0	2.7
Carriere-D	W	2.1	1.9	1.7	1.6
Cravins-D	W	12.3	10.8	81.1	68.8
Mount-D	W	26.1	28.9	14.4	25.9
Thibodaux-R	W	12.0	11.1	0.2	1.0
			(n=241)		(n=30)

TABLE 10

OLS REGRESSION AND HOMOGENOUS PRECINCT ESTIMATES OF BLACK AND WHITE VOTER PREFERENCES, LOUISIANA BESE ELECTIONS, 1999-2004

	White		Black	
	OLS	HP	OLS	HP
1999				
District 3				
Buquet-D	60.8	61.3	36.2	43.3
Terrebonne-D	39.2	38.7	63.8	56.7
		(n=189)		(n=14)
District 6				
Blanchard-R	27.4	26.6	17.3	18.5
Dent-R	38.4	38.1	4.2	10.0
Musemeche-D	34.2	35.3	78.5	71.4
		(n=217)		(n=4)
District 6 Runoff				
Dent-R	53.4	52.3	15.1	27.8
Musemeche-D	46.6	47.7	84.9	71.2
		(n=217)		(n=4)
District 7				
Bayard -D	59.9	61.8	46.1	50.5
MacKnight-D	40.1	38.2	53.9	49.5
		(n=265)		(n=21)
District 8				
Hunter-D*	26.1	27.8	40.8	41.6
Johnson-D	48.8	49.5	57.2	54.8
Wise-I*	25.1	22.8	2.0	3.7
		(n=105)		
(n=80)				
2003				
District 1				
Contois-R	29.9	30.1	<0	5.6
Dastugue-R	38.4	40.2	<0	3.8
Ferguson-D	31.7	29.8	100.0	90.6
		(n=218)		(n=7)
District 1 Runoff				
Dastugue-R	61.7	63.4	16.4	7.9
Ferguson-D	38.3	36.6	83.6	92.1
		(n=218)		(n=7)

	White		Black	
	OLS	HP	OLS	HP
District 2				
Campbell-Rock-D	12.3	12.2	13.8	10.3
Givens-D*	34.5	30.0	30.4	43.2
Johnson-D	36.1	39.8	39.7	33.0
Wilson -D	17.1	18.1	16.2	13.4
		(n=19)		(n=131)
District 2 Runoff				
Givens-D*	46.8	44.6	62.0	60.4
Johnson-D	53.2	53.4	38.0	39.6
		(n=19)		(n=131)
District 5				
Herford-R	35.7	----	23.8	----
Stafford-D	64.3	----	76.2	----
District 6				
Bel-D	23.8	22.7	79.6	65.5
Broussard-R	48.3	48.5	2.7	10.8
Hammatt-R	27.8	28.8	17.6	23.6
		(n=207)		(n=3)
District 6 Runoff				
Bel-D	29.7	29.1	100.0	88.0
Broussard-R	70.3	70.9	<0	12.0
		(n=207)		(n=3)

TABLE 11

OLS REGRESSION AND HOMOGENOUS PRECINCT ESTIMATES OF BLACK AND WHITE VOTER PREFERENCES, LOUISIANA PUBLIC SERVICE COMMISSION ELECTIONS, 1996-2004

	White		Black	
	OLS	HP	OLS	HP
1998				
PSC District 3				
Charbonnet-D*	19.0	20.0	29.0	28.6
Dixon-D*	30.2	27.1	38.0	62.1
Schwegmann-D	50.8	52.9	11.4	9.4
		(n=56)		(n=194)
PSC District 3 Runoff				
Dixon-D*	40.6	38.3	87.6	90.2
Schwegmann-D	59.4	61.7	12.4	9.8
		(n=56)		(n=194)
PSC District 4				
Muller-R	15.2	----	50.0	----
Sittig-D	84.8	----	50.0	----
2000				
PSC District 2				
Field-R	71.2	72.8	41.8	45.9
Warner -I	28.8	27.2	58.2	54.1
		(n=324)		(n=16)
2002				
PSC District 1				
Blossman-R	71.1	71.3	36.7	55.4
Schwegmann-I	28.9	28.7	62.3	44.6
		(n=364)		(n=3)

	White		Black	
	OLS	HP	OLS	HP
2002				
PSC District 5				
Campbell-D	40.5	----	48.2	----
Crowley-I	11.4	----	2.0	----
Guy-R	9.3	----	8.5	----
Owen-D	38.8	----	41.3	----
PSC District 5 Runoff				
Campbell-D	49.0	----	90.9	----
Owen-D	51.0	----	9.1	----
2004				
PSC District 3				
Boissiere*-D	61.3	64.7	25.2	27.1
Dixon*-D	24.0	17.7	15.8	15.5
Fields*-D	14.8	17.7	59.0	57.4
PSC District 3 Runoff				
Boissiere*-D	81.4	80.8	33.6	36.8
Fields* -D	18.6	19.2	66.4	63.2

*African-American candidate.

TABLE 12

ECOLOGICAL REGRESSION ESTIMATES OF WHITE VOTER AND BLACK VOTER PREFERENCES IN LOUISIANA STATEWIDE CONSTITUTIONAL OFFICES, 1995 - 2003

	Primary		Runoff	
	%White	%Black	%White	%Black
1995, Governor				
Foster-R	36.1	3.4	87.0	17.1
Fields-D*	0.8	64.7	13.0	82.9
Landrieu-D	17.2	12.8		
Roemer-R	18.1	7.9		
Others (n=12)	27.7	11.2		
1995, Lieutenant-Governor				
Blanco-D	39.1	43.3	60.2	79.1
Kreiger-R	14.6	8.1	39.8	20.9
John-D	16.0	23.8		
Others (n=8)	30.2	24.8		
1995, Attorney General				
Deaton-R	8.8	9.6		
Ieyoub-D	73.9	82.0		
Tarpley-R	13.4	3.0		
Wells-I	3.9	5.4		
1995, Secretary of State				
McKeithen-R	58.9	51.4		
Schmidt-D	34.6	28.6		
Winfield-D	6.5	20.0		
1995, Treasurer				
Chehardy-R	29.2	6.7		
Duncan-D	33.1	68.8	53.8	74.0
Joseph-R	8.6	7.4		
Theriot -D	29.1	17.1	46.2	26.0
1995, Insurance Commissioner				
Brown-D	63.0	67.4		
Fletcher-I	8.5	5.0		
Jones-D	4.1	10.4		
Nungesser-R	28.1	16.2		

	Primary		Runoff	
	%White	%Black	%White	%Black
1995, Agriculture Commissioner				
Fresina -D	5.2	4.0		
Johnson-R	21.1	13.5		
Odom-I	73.7	82.5		
1995, Elections Commissioner				
Anderson-R	27.0	8.3		
Fowler-D	73.0	91.7		
1999, Governor				
Foster-R	81.2	8.9		
Jefferson-D*	8.4	82.1		
Others (n = 9)	10.4	8.9		
1999, Lieutenant-Governor				
Blanco-D	75.6	91.4		
DuPlantis-R	12.2	2.4		
Martin-R	10.6	2.6		
Roberts-Joseph-I	1.5	2.9		
1999, Treasurer				
Duncan-D	45.2	42.0		
Kennedy-D	54.8	58.0		
1999, Insurance Commissioner				
Boudreaux-R	34.7	2.4	48.1	19.8
Brown-D	41.9	72.6	51.9	80.2
Riddick-D	23.4	15.0		
1999, Elections Commissioner				
Jenkins-R	32.1	7.9	49.1	27.1
Fowler-D	17.3	46.2		
Terrell-R	16.3	16.0	50.9	72.9
Others (n=8)	34.3	29.8		

	Primary		Runoff	
	%White	%Black	%White	%Black
2003, Governor				
Jindal-R	31.7	7.9	52.3	14.9
Blanco-D	21.8	7.3	47.7	85.1
Ieyoub-D	10.9	34.5		
Leach-D	9.3	27.0		
Ewing-D	12.4	18.9		
Downer-R	9.3	>0		
Others (n= 10)	4.4	8.8		
2003, Lieutenant-Governor				
Ankeshein-R	1.4	0.3		
Bennett-R*	7.6	4.7		
Holloway-R	28.9	13.6		
Landrieu-D	41.6	79.9		
Schorr-R	1.3	0.3		
Schwegmann-R	19.2	0.9		
2003, Secretary of State				
McKeithen-R	74.1	68.5		
Lewis-I	6.4	3.6		
Donovan-D	19.5	27.9		
2003, Attorney General				
Foti-D	45.0	74.9		
Terrell-R	55.0	25.1		
2003, Insurance Commissioner				
Kyle-R	32.6	25.5	47.2	16.9
Wooley-D	29.2	25.1	52.8	83.1
Johnson-D	4.5	11.1		
Fontenot-R	14.3	8.7		
Fletcher-D	15.1	27.5		
Bell-I	4.3	2.2		
2003, Agriculture Commissioner				
Johnson-R	38.5	10.4		
Odom-D	61.5	89.6		

TABLE 13

OLS ESTIMATES OF RACIAL VOTING PATTERNS IN US SENATE ELECTIONS, 1996-2004

Candidate/Race	White Voters	Black Voters
1996		
Landrieu, D	19.5	
21.0		
Jenkins, R	26.3	
16.4		
Ieyoub-D	8.6	42.4
Duke-R	19.2	4.8
Others (n= 11)	26.3	
15.3		
1996 Runoff		
Landrieu-D	37.1	
78.6		
Jenkins-R	62.9	21.4
1998		
Breaux, D	55.6	
80.1		
Donelon, R	41.1	
7.8		
Others (n=6)	3.2	12.1
2002		
Landrieu, D	32.6	
78.5		
Terrell, R	28.9	
6.6		
Cooksey, R	23.3	6.4
Perkins, R	12.0	4.2
Others (n=5)	3.4	8.1
2002 Runoff		
Landrieu, D	36.9	
91.4		
Terrell, R	63.1	
8.6		
2004		

2992

Vitter-R	64.2	11.8
John-D	26.3	39.6
Kennedy-D	6.7	38.7
Morrell*-D	0.7	
5.1		
Others (n=3)	2.0	4.7

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EXCUTIVE SUMMARY OF THE BULLOCK-GADDIE STUDY OF SOUTH CAROLINA

South Carolina exhibits progress in voting rights, showing evident advances in the rates of minority voter registration and participation. Differences in political preferences still are evident among African American and white South Carolinians, though these differences are a function of party preference rather than race *per se*.

In 1964, 37.3 percent of the state's black population, compared to 75.7 percent of the white population, had signed up to vote. By the 1980s, registration rates differed little by race, and since 1998 the two races have reported being registered at highly comparable rates. In 2002, the black registration rate was par to whites and in the 2004 election, each race reached record high levels of registration—white registration was only three points above.

Beginning in 1990, comparisons between the black voting age population in South Carolina and the general population in the non-South show a higher reported rate in South Carolina. In six of the thirteen election years since 1980, South Carolina voting age blacks report turning out to vote at higher rates than whites. For the three most recent election years, the reported rates of participation are similar. Similarly, black self-reported participation in South Carolina outpaces the non-South in the three most recent election years. Racial registration data from South Carolina also indicates that African Americans in the electorate exceed the census bureau's estimated black share of South Carolina's voting age population.

The number of African American elected officials in South Carolina increased from 28 in 1969 to 534 in 2004. Since 1993, South Carolina has elected one African-American congressman who is an African-American candidate of choice, James Clyburn. The first African-American to win a legislative seat in the modern times won election to the House in 1970, and the black proportion of seats grew to 20% of seats by 1995. The number of black seats in the 46 member Senate has fluctuated between six and eight since 1991 and is currently eight. While no African American has won a statewide office in South Carolina in modern times, 42 percent of the Democrats in the Senate are black.

Since 1994, statewide elective offices and the congressional delegation have been generally dominated by Republicans, who defeat Democratic candidates regardless of race. African Americans competed for two statewide posts in 2002, with vote shares comparable to those of white Democrats who lost statewide bids in 2002. This shows that party seems to be a better predictor with Republicans winning all but two of the statewide offices being contested.

South Carolina has a history of racially-polarized voting. However, in general elections, there has been an evolution toward less white cohesiveness and greater black cohesiveness within the electorate. The white vote in general elections has generally slipped away from Democrats, while the black vote became highly cohesive for Democratic nominees regardless of race. Democrats in general struggle to achieve a third of the white vote, and in the absence of incumbency, white vote shares oscillate between a quarter and three-tenths. This degree of electoral frustration is evident from presidential races down to low-profile statewide contests. Since 2000, the vote among whites for black Democratic candidates has been consistent with that of white candidates of the same incumbency status.

An Assessment of Voting Rights Progress in South Carolina

Prepared for the Project on Fair Representation
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An Assessment of Voting Rights Progress in South Carolina

V.O. Key writes of the "harshness and ceaselessness of race discussion in South Carolina. . ."[1] After noting the extensiveness of the black population in the state, Key observes that, "South Carolina's preoccupation with the Negro stifles political conflict."[2] Of all the former Confederate states, South Carolina had, proportionally, the largest slave population, the largest proportion of white households owning slaves, and was historically the most bellicose in defense of slavery from prior to the founding of the United States until through the beginning of the Civil War. The status and subjugation of blacks in South Carolina was a priority of white political leadership and a matter of public policy.

The behavior of whites in South Carolina at the end of the 19th century and on into the 20th century illustrates Key's black threat hypothesis.[3] The state's population was almost 60 percent black in 1900 and remained majority black through the 1920 census. For more than half a century after the Civil War, if African Americans had access to the ballot, and had voted cohesively, they could have elected statewide officials. Moreover, many counties would have been subject to black rule in a fair electoral environment and the influence of black votes would have persisted well beyond 1920 in some counties.

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[1] V.O.Key, Jr. 1949. *Southern Politics*. New York: Alfred A. Knopf. p. 130.

[2] *Ibid*, p. 131.

[3] *Ibid*, p. 130.

South Carolina whites headed off the possibility of black political dominance (or even influence) by instituting techniques designed to restrict black political participation. The state adopted a literacy test in 1895 and made use of a white primary from 1896 until 1947. The state went to an extraordinary effort to maintain the white primary by repealing all state legislation relating to the conduct of primary elections.[4] As part of its broad panoply of disfranchising techniques, South Carolina adopted a poll tax in 1895 and continued to require payment of this tax through the 1950 election cycle. Race baiters like "Pitchfork Ben" Tillman encouraged whites to keep blacks in subordinate positions. In 1948, its former governor, Strom Thurmond, led the States' Rights Party in its presidential bid—a campaign that stressed the traditional southern distrust of federal authority and the desire to continue to subjugate African Americans' political and economic ambitions.[5]

Black Turnout and Registration

Despite the state's eagerness to secede and its actions that helped initiate the Civil War and a long history of race-baiting oratory, by 1964, South Carolina had a higher share of its African-American voting age population registered to vote than any other Deep South state. At the time of the 1964 presidential election, 37.3 percent of the state's black population along with 75.7 percent of the white population had signed up to vote.[6]

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[4] *Ibid*, p. 627.

[5] The irony of this event is that prior to 1948, Strom Thurmond was characterized as a political moderate who had the support of the NAACP in his bid for governor.

[6] U.S. Commission on Civil Rights, *Political Participation* (Washington, D.C.: U.S. Government Printing Office, 1968), pp. 252-253.

While South Carolina whites registered at higher rates, the state's black registration rate was roughly twice that of Alabama and more than five times the percentage found in Mississippi.

Within two years after the signing of the initial Voting Rights Act, a majority (51.2 percent) of South Carolina's adult black population along with 81.7 percent of the white population had signed up to vote. While the proportion of the black population registered to vote in South Carolina had been 9.5 percentage points below that of its northern neighbor before the Voting Rights Act, by 1967, North and South Carolina had almost identical shares of their black voting age populations registered.[7]

Prior to the Voting Rights Act, only two counties in the Palmetto State had less than 10 percent of their black adults registered to vote.[8] By 1967, after federal examiners had registered 3,403 blacks in Clarendon County, 69.4 percent of its black population was on the registration rolls. In McCormick County, which was not immediately visited by federal examiners to sign up voters, black registration had risen to 43.5 percent of the age eligible population by the middle of 1967.

After each election, the U.S. Bureau of the Census conducts a survey to determine the rates at which Americans have registered and voted. These surveys rely upon self-reports of the individuals who were sampled and, consequently are almost certainly

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[7] *Political Participation*, op.cit. pp. 222-223.

[8] In Clarendon County, the site of one of the challenges to separate but equal policies in school assignments that became part of *Brown V. Board of Education*, only 6.9 percent of the black population was registered to vote while in the state's smallest county, McCormick, 9.3 of the black population was registered.

inflated. However despite the problem of over-reporting, these figures can be used to make comparisons across time and across different states and regions.

Table 1 presents the Census Bureau estimates of registration by race in South Carolina from 1980 through the 2004 presidential election. During the 1980s, registration rates differed little by race in the Palmetto state. The greatest disparities come in 1984 and 1988. In the latter year, 61.8 percent of whites compared with 56.7 percent of blacks say they were registered. In 1984, 62.2 percent of the African-American population and 57.3 percent of the white had registered to vote. In three of the five election years, higher proportions of African Americans than whites reported being on the voter rolls. During the 1990s, white registration rates generally exceeded those for blacks although in 1990, the rate of black registration was 5.7 points greater than white registration. Since 1998, the two races have reported being registered at very comparable rates. Indeed, in 1998 and 2000, the figure is almost exactly the same for blacks and whites. In 2002, for instance, the black registration rate was two points greater than that for whites. In the 2004 election, each race reached record high levels of registration, although the white figure was three points above that for African Americans.

(See Table 1)

Overall, the self-reported black registration has increased. For three of the elections in the 1980s, fewer than 60 percent of the blacks of voting age reported being registered. Thereafter, the figure drops below 60 percent only in 1994 when it stands at 59 percent. For the four most recent elections, approximately 68 percent of blacks reported being registered for the three elections of 1998-2002 while the figure increases to record level of 71.1 percent in 2004. The 71.1 percent of blacks who report being

registered in 2004 exceeds the white self-reported registration rate for any year other than 2004 when the white figure is 74.4 percent.

In order to have a base line for comparison of the progress of a state subject to section 5 preclearance, the bottom half of the table presents the self-reported registration rates by race for voters who do not live in the South. In some of the earlier elections, especially, 1982 through 1988, blacks living outside the South are more likely to report being registered than those who lived in the Palmetto State. Beginning in 1990, however, a larger proportion of the black voting age population in South Carolina, compared with the North and West, reported being registered, except for 1992. While the differences in the South Carolina and the non-South rates were modest through 1996, a substantial gap opens up beginning in 1998 when 68 percent of the blacks in South Carolina, but only 58.5 percent of the non-southern blacks, claim to be registered. In 2000 the disparity is almost seven percentage points and in 2002, 68.3 percent of blacks of voting age in South Carolina reported having been registered compared with only 57 percent of African Americans outside the region.

Table 2 presents the post-election survey results from the Bureau of the Census surveys on self-reported turnout. In six of the thirteen election years, South Carolina voting age blacks report turning out to vote at higher rates than whites. In several elections, the reported differences are modest (1980, 1986). The year in which the difference between black and white self-reported voting is largest in favor of African Americans is 1984, when 51.4 percent of the blacks compared with 47.9 percent of the whites said they went to the polls. In contrast, in some years a substantially larger percentage of whites than blacks report having voted. For example, in 1988, 11.6

percentage points more whites than blacks reported voting; and in 1992, the white advantage in self-reported turnout was 61.6 percent compared to 48.8 of the blacks who reported voting. For the three most recent election years, the reported rates of participation are similar with higher percentages of blacks reporting voting in both 2000 and 2002; while in 2004, four percentage points more whites than African Americans said they went to the polls.

The levels of black participation were in the 40 to 50 percent range with the outliers being 1982 and 1994, when approximately 39 percent of the blacks reported voting, and 2000 and 2004, when approximately 60 percent of the African Americans said they went to the polls. In mid-term elections, black participation rates are closer to 40 percent with the high point coming in 2002 when almost 49 percent of blacks reported voting.

(See Table 2)

For comparative purposes, black and white self-reported turnout rates outside the South are also included in Table 3. For the first five election years, a larger proportion of blacks outside the South, compared with South Carolina alone, reported voting. But in 1990, 44.6 percent of South Carolina blacks reported participating in the election compared with 38.4 percent of the non-South blacks. In 1994 and 1996, the differences between South Carolina and non-South black self-reported participation are small, although figures for South Carolina trail those for the non-South. In the three most recent elections for which Census Bureau data are available, black self-reports of participation in South Carolina outpace those in the non-South. These differences increase from an

advantage in South Carolina of 2.4 percentage points in 1998, to 7.6 percentage points in 2000, and 9.4 percentage points in 2002.

Whether compared to the self-reported participation rates of whites in-state or blacks outside of the state, South Carolina black participation compares quite favorably. These comparative rates of participation suggest that consistent obstacles to African-American registration and voting no longer account for uncommonly small registration or turnout rates in the Palmetto state.

South Carolina was one of the first states to report actual registration and turnout figures by race. Table 3 shows the black and white registration and turnout in general elections for the state in 1972 through 2004. Since these are actual counts, they are not subject to the kind of over-reporting that frequently results in over-estimation of registration and turnout in the Census Bureau reports. The turnout percentages in Table 3, unlike Tables 1 and 2, use the registration figures as the denominator (where the denominator is the adult population).

For both races, registration has increased dramatically. For African Americans the number of registrants has almost tripled over the 32-year period. In 1972, less than a quarter of a million African Americans were on the voter rolls, while by 2004 the figure had reached almost two-thirds of a million. The number of black registrants in 2004 almost exactly equals the number of white registrants in 1972, which was two thirds of a million (and has grown to almost one and two-thirds million). In 1972, blacks made up roughly one-fourth of the state's registrants while 32 years later; blacks comprised 28.5 percent of the registrants. This exceeds the black share of South Carolina's voting age population which the Census Bureau estimates to be 28 percent as of 2004.

(See Table 3)

Black turnout has almost tripled during the period covered in Table 3. When the much smaller denominator of registration is used rather than the age-eligible population used in Table 2, participation rates for both blacks and whites are larger. Even back in 1972, more than two-thirds of the black registrants voted. This percentage has generally been approximated in subsequent presidential years with the 56.4 percent in 2000 being an exception. In 1974, only 46 percent of the black registrants turned out. In subsequent mid-term elections, most black registrants have cast ballots.

Among whites, the 80 percent turnout rate in 1972 was exceeded only in 1992. Until 1996, at least three-fourths of the white registrants have participated in presidential years. In 1996 and 2000 white turnout was closer to two-thirds, but rose to 72 percent in 2004. In mid-term elections, 55-67 percent of the white registrants have voted. While the white turnout rate always exceeds that of blacks, in 1982 the disparity was only half a percentage point. Usually the difference has been less than ten percentage points. The average rates of turnout for the 32-year period are 66.5 percent for whites and 58.7 percent for African Americans.

In 2004, African Americans cast 26.6 percent of the votes in South Carolina. This is an increase of a 4.4 percentage point over the 22.2 percent of the votes cast by blacks in 1972. The share of the votes cast by African Americans in 2004 is less than two percentage points below the black share of the voting age population in South Carolina as estimated by the Census Bureau in 2004. The most dramatic growth in black turnout is an almost 50 percent increase between 2002 and 2004. The numbers of black voters was relatively constant from 1996 through 2002, hovering just below 300,000 except in 2002.

But in 2004, black participation increased dramatically. In the most recent gubernatorial election year, the rate at which whites voted was less than five percentage points higher than the rate for black participation. In the most recent presidential election year, the racial disparity was approximately 6.5 percentage points.

While the rate at which black registrants go to the polls is typically a few percentage points lower than the rate for whites, the data in Tables 1 through 3 indicate that whatever barriers to black participation may have existed 40 years ago have been largely, if not totally, overcome. Black registration and turnout have increased dramatically. Political science research suggests that much of the disparity that persists in participation rates between blacks and whites is due more to differences in socioeconomic characteristics and efforts to mobilize than in obstacles to registration. The literature on American political participation consistently finds that socioeconomic status (SES) is the determinant of political involvement. The classic *Who Votes?*,[9] Leighley and Nagler's[10] reexamination of the *Who Votes?* analysis, and the work of Verba and his colleagues[11] consistently finds this effect across ethnic and racial groups.

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[9] Raymond Wolfinger, and Steven Rosenstone. 1980. *Who Votes?* New Haven: Yale University Press.

[10]Jan E. Leighley and Jonathan Nagler. 1992. Class Bias in Turnout: The Voters Remain the Same. *American Political Science Review* 86: 725-736; Jan E. Leighley and Jonathan Nagler. 1992. Individual and Systemic Influences on Turnout: *Who Votes?* 1984. *Journal of Politics* 54: 718-740.

[11] Sidney Verba and Norman Nie, 1972. *Participation in America: Political Democracy and Social Equality.* New York: Harper, Row; Sidney Verba, Kay Lehman Schlozman,

Additional research finds that once one places controls for SES, black "overparticipation" is found among African Americans.[12] However, Abramson and Claggett[13] observed that African-American voter participation still lagged white participation, even when controls for socio-demographic influences—especially education—were introduced, while Uhlaner et al find that Anglo whites and African Americans have similar rates of political participation, and that it is Latinos who lag in voting due to education and citizenship factors.[14] Leighley and Vedlitz find that cultural theories are largely not valid in explaining differences in participation beyond SES effects.[15]

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and Henry Brady, 1995. *Voice and Equality Civic Volunteerism in American Politics.* Cambridge: Harvard University Press.

[12] See, for example, Thomas M. Guterbock, and Bruce London. 1983. Race, Political Organization, and Participation: An Empirical Test of Four Competing Theories. *American Sociological Review* 48: 439-453; Marvin E. Olsen, 1970. Social and Political Participation of Blacks. *American Sociological Review.* 35: 682-697; Verba and Nie, 1972.

[13] Paul R. Abramson, and William Claggett, 1984. Race-related Differences in Self-Reported and Validated Turnout. *Journal of Politics*, 46: 719-739.

[14] Carole J. Uhlaner, Bruce E. Cain, and D. Roderick Kiewiet, 1989. Political Participation of Ethnic Minorities in the 1980s. *Political Behavior* 11: 195-231.

[15] Jan E. Leighley and Arnold Vedlitz, 1999. Race, Ethnicity, and Political Participation: Competing Models and Contrasting Explanations. *Journal of Politics* 61: 1092-1114.

Socio-economic status matters and so does political effort. Katherine Tate argues in the *American Political Science Review* that participation by African Americans is associated with education, political interest, and partisanship.[16] She also observes that intensity of racial identity is not a source of participation,[17] but instead participation in civic culture organizations such as churches or political organizations drives participation. Arnold Vedlitz finds that intensive voter registration drives do not in and of themselves increase participation, but rather increase the number of non-voting registrants.[18] Instead, it is registration plus mobilization—as Tate observed—that matters. Wielhouwer validates the importance of these findings by pointing out that African-American undercontacting really arises from a lack of GOP contacting.[19] Those who are contacted belong to civic culture organizations that possess strong social

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[16] Katherine Tate, 1991. Black Political Participation in the 1984 and 1988 Presidential Elections. *American Political Science Review* 85:1159-1176.

[17] Maurice Mangum (2003), writing in the *Political Research Quarterly*, finds that group efficacy – the belief that their group is taken seriously – motivates participation among African-Americans, as does trust in government and the degree of individual political engagement. See Maurice Mangum, 2003. Psychological Involvement and Black Voter Turnout. *Political Research Quarterly* 56: 41-48.

[18] Arnold Vedlitz, 1985. Voter Registration Drives and Black Voting in the South, *Journal of Politics* 47: 643-651.

[19] Peter W. Wielhouwer, 2000. Releasing the Fetters: Parties and the Mobilization of the African American Electorate. *Journal of Politics*. 62: 206-222.

networks. According to Wielhouwer, while education still matters, contacting is important for explaining variations in mobilizing black voters.

The actual turnout figures show similar voting rates between whites in South Carolina and African Americans nationwide. Although the figures in Table 3 are more reliable than those in Table 2, comparisons with most other states are not possible using the Table 3 data, since most states do not maintain registration data by race nor do they report turnout data by race. Thus, despite problems frequently associated with over-reporting for the figures in Tables 1 and 2, using these tables is appropriate in order to make comparisons across states and between states and regions.

African-American Officeholding

When record keeping began on the numbers of African American elected officials, South Carolina had 28 in 1969. Almost two-thirds of these held municipal offices while only four held county positions and two served on school boards. By 1974, the number of black officeholders in South Carolina had risen to 116. As of 1980, the number had exceeded 200 and five years later it broke 300. The most recent figures reported in Table 4 are for 2001 and show a total of 534 black officeholders. Among this number are 252 serving in cities and 83 holding county office. Another 157 serve on school boards. The 2001 figures show a slight dip from those at the end of the 1990s.

(See Table 4)

African-American Representation in Congress

The South Carolina congressional districting plan for the 1990s created a majority-black district. The 6th district which includes parts of Charleston, Columbia and all of Florence was drawn to be 62 percent black. With this heavy concentration of African Americans, the incumbent, Robin Tallon, a white incumbent who had a reputation for being responsive to black concerns,[20] opted not to seek reelection.[21] James Clyburn who had spent the last 18 years as the commissioner for Human Affairs and who had twice lost bids to become Secretary of State easily defeated a distinguished field of fellow African Americans. While Clyburn had not held elected office, he defeated three state legislators taking 56 percent of the vote in the initial primary. Clyburn continues to represent the 6th district and appears to be invulnerable even though the district's black population dropped below 57 percent in 2002.

South Carolina was the Deep South state in which Republicans had their first major success. This early success stemmed from the decision of Senator Strom Thurmond to switch to the Republican Party in 1964. Thurmond, a former governor and the State's Rights Party nominee for president in 1948 gave the GOP credibility at a time when Republicans in other parts of the Deep South struggled to achieve any success below the level of the presidential elections. By the 1990s, the Republican Party had come to dominate South Carolina politics. Republicans won three consecutive gubernatorial and after 1994 held four of the six congressional offices. For more than a

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[20] Carol M. Swain. 1993. *Black Faces, Black Interests*. Cambridge: Harvard University Press. pp. 145-159.

[21] David T. Canon. 1999. *Race, Redistricting, and Representation*. Chicago: University of Chicago Press. p. 135.

decade, Democrats have held only two South Carolina congressional districts and one of these has been filled by an African American.

While African Americans hold half of the Democratic congressional seats, earlier black candidacies came up short. The first African American to win a Democratic nomination, Matthew Perry, who later became a federal judge, polled 44 percent of the vote against Floyd Spence in the district that contains Columbia in 1974. During the 1980s, Spence again confronted African-American challengers in his 64 percent white district. In 1982, the black challenger, Ken Moseley, won 41 percent of the vote.

African-Americans in the State Legislature

The South Carolina House holds the distinction as the only American state legislative chamber to have ever had an African-American majority among its members. Briefly in the immediate aftermath of the Civil War, blacks held most seats in the lower chamber.[22] The success enjoyed by African Americans in winning seats in the South Carolina House was short lived as white males who had served the Confederacy regained the franchise and began to impose obstacles that reduced black participation.

The first black to win a seat in the state House in modern times won election in 1970. As Table 5 shows, the black share of the House membership in the South Carolina House tripled in 1975 reaching almost 10 percent. Only modest growth in the black proportion occurred over the next two decades. Then in 1995, the black percentage rose to almost 20 percent where it remains.

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[22] W. E. B. Du Bois (introduction by David Levering Lewis). 1999. *Black Reconstruction in America 1860-1880.* New York: Free Press.

(See Table 5)

Traditionally the South Carolina Senate was the dominant political institution in the state. Senators elect judges and in the past some held important administrative posts while sitting in the upper chamber.[23] Until the implementation of the one-person, one-vote judicial mandate, each South Carolina county had its own state senator. Each of these 46 senators was a major if not the dominant force in his/her county. The senator controlled the finances of the county through the supply bill which provided funding for county functions and had to be enacted by the state legislature.

While the practice of giving each county its own senator did not survive the 1960s, the state sought to maintain the sanctity of county boundaries when required to equalize population among senate districts by combining counties into multi-member districts when necessary. As a result of the relatively large electoral districts represented by South Carolina senators, all of which had white majorities, the first African American did not reach the upper chamber until 1983—when DeQuincey Newman won a special election to one of the five seats allocated to Richland County (Columbia).[24]

The redistricting plan implemented in 1984 eliminated multi-member Senate districts. In the new single-member plan, ten districts had black population majorities and African Americans won four of these. Table 5 shows that the number of black seats

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[23] Key, *Southern Politics*, p. 151.

[24] Charles S. Bullock, III, and Ronald Keith Gaddie. 1993. Changing from Multi-Member to Single-Member Districts: Partisan, Racial, and Gender Impacts. *State and Local Government Review* 25: 155- 163.

in the 46 member Senate has fluctuated between six and eight since 1991 and is currently eight.

Republicans won control of the state House in 1994 and after the election a decade later held 60 percent of the seats in that chamber. Of the House Democrats about half were African Americans in 2005. In 2001, Republicans took control of the Senate and by 2005 held 59 percent of the seats. In the Senate, 42 percent of the Democrats are black.

Statewide Candidacies

No African American has won a statewide office in South Carolina in modern times. Theo Mitchell, a black state senator, did win the Democratic nomination for governor in 1990. This nomination, however, was widely seen as having little value because of the popularity of the incumbent Republican Carroll Campbell. Mitchell was further weakened by federal indictments and managed to obtain only 27 percent of the vote. Mitchell had difficulty mobilizing even the black community. It is estimated that between 15 and 25 percent of the black vote went to the Republican Campbell.[25] Exit poll data for South Carolina in 1990 show Campbell with 24% of the African-American vote.[26]

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[25] Michael Barone and Grant Ujifusa. 1991. *The Almanac of American Politics, 1992.* Washington, D.C.: National Journal. p. 1113.

[26] According to the VRS exit poll in the 1990 South Carolina Gubernatorial Election:

	Theo Mitchell-D	Carroll Campbell-R	n
White	14.5	81.1	1,412

The growing significance of the black vote within the Democratic Party came after the Republican Party's emergence, as the dominant party in the state, based on its ability to appeal to most white voters. As a consequence, Democrats have struggled to win any offices. By 2005, only two of the nine constitutional offices in the Palmetto State—Commissioner of Education and State Treasurer—had a Democratic incumbent. Indeed, Democrats allowed one position, that of Adjutant General to go to a Republican by default, since no Democrat came forward to contest the position.

African Americans competed for two statewide posts in 2002. Steve Benjamin was the Democratic nominee for Attorney General while Rick Wade represented the Democratic Party in the contest for Secretary of State. The vote shares won by the two African-American Democrats compare favorably with white Democrats who lost statewide bids in 2002 as reported in Table 6. Of the losing statewide Democrats only incumbent governor Jim Hodges and the Democratic nominee for the Commissioner of Agriculture drew substantially larger numbers of votes than did the two African-American candidates. These results suggest that race has little impact on the behavior of South Carolina voters. Instead, party seems to be a better predictor with Republicans winning all but two of the statewide offices being contested. The tide toward the

Black	63.7	24.0	438

See Voter Research and Surveys, 1990. VOTER RESEARCH AND SURVEYS GENERAL ELECTION EXIT POLL: STATE FILES, 1990 [Computer file]. New York, NY: Voter Research and Surveys [producer]. Ann Arbor, MI: Inter-university Consortium for Political and Social Research [distributor], 1991.

Republican Party was so strong in 2002 that two Democratic incumbents, Governor Jim Hodges and Comptroller General Jim Lander, both fell to Republican challengers.

(See Table 6)

Further evidence of the degree to which partisanship may be more significant than race is offered in Table 7. This table shows the racial make up of individuals who participated in the Democratic primaries from 1984 through 2004. In the mid-1980s, whites constituted more than 60 percent of the Democratic primary voters. Nonetheless, the share of the Democratic primary vote cast by whites has declined over time. In 1996, for the first time, more African Americans than whites voted in the Democratic primary. In the next two primaries, slightly more white than black voters asked for Democratic ballots. But in the 2002 Democratic primary, which had a record low number of participants at just over 114,000, 61 percent of those relatively few voters were African Americans. This is the primary that chose the nominees who faired so poorly in the general election of constitutional officers. In the most recent primary, again far more African Americans than whites participated with blacks making up 58 percent of the Democratic primary electorate.

(See Table 7)

The overall Democratic primary vote has decreased substantially over time. In 1986, a mid-term election in which nominees for state constitutional officers were selected, almost 360,000 voters helped select those Democratic nominees. In the two most recent mid-term elections, fewer than 150,000 voters participated in the Democratic primary. (Since South Carolina does not register voters by party, individuals have the option of choosing to participate in either parties' primary when they go to the polls.)

Problems confronted by African Americans in winning major offices in South Carolina are probably due more to their partisanship than to their race. Most whites support Republicans in the general election and by substantial margins vote in the Republican primary while the bulk of the vote in the Democratic primary is cast by African Americans.[27] With Republicans dominating the congressional delegation, both chambers of the legislature, and the state's constitutional officers, it is not surprising that African Americans have not won statewide posts.

Racial Voting Patterns

James W. Loewen, a sociologist at the University of Vermont, did an extensive study of racial voting patterns in South Carolina for the period between 1972 and 1985. His analysis of 130 elections, most of which were local, used data provided by the U.S. Department of Justice from the State Election Commission files. Loewen examines only contests for single-member districts and ones in which there was at least one serious black candidate and one serious white candidate.[28] For the 130 elections, Loewen found that, on average, 90.2 percent of the whites voted for white candidates while, on average, 85.0 percent of blacks voted for a black candidate. He noted that, "Black voting behavior began somewhat less polarized than white but soon increased to nearly the white level." Loewen divided the elections into two-year segments. Only in the 1978-79 periods were

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[27] Democrats Aim for Gubernatorial Gains. *Southern Political Report.* April 15, 2005. p. 5.

[28] James W. Loewen, "Racial Bloc Voting in South Carolina," unpublished manuscript, August 13, 1987.

blacks more cohesive (an average of 91.8 percent of blacks voted for a black candidate) than whites. An average of 87.5 percent of whites voted for a white candidate during that biennium. Loewen notes that, "Whites bloc voted even more than blacks, making it difficult for black candidates to win."[29] From his examination of racial voting, Loewen concludes that, "white and black candidates had a 50/50 chance when 51.3% of the valid ballots for the office were cast by black voters."[30]

The Loewen study included three congressional contests. The average level of black cohesion for those contests was 74.8 percent of the African-American voters supporting a black candidate while 78.8 percent of the white candidates backed a white candidate.[31] A more recent study provides evidence of racial voting patterns in a set of four black-versus-white South Carolina congressional contests. These four contests involve the initial election of James Clyburn, the first African American to be elected to Congress from South Carolina in the 20th century, and his next three re-elections. As Table 8 reports, unlike in the 1970s and 1980s when whites were more cohesive than blacks, today black voters are far more cohesive than white voters. Table 8 provides three different estimates of cohesion for both black and white voters. The first estimate for each contest which appears under the "OLS" heading presents the estimate derived from using ordinary lease squares ecological regression. This is one of the two techniques for determining racial voting patterns sanctioned by the Supreme Court in

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[29] *Ibid.*, pp. 5-6.

[30] *Ibid.*, p. 6.

[31] *Ibid.*, p. 15.

Thornburg v. Gingles.[32] The second technique is ecological inference developed by Gary King.[33] The third estimate reports the share of the vote in precincts in which at least 90 percent of the voters were of one race. This approach was also approved by the court in *Thornburg*.

The lowest level of cohesion reported for black voters indicates at least 95 percent of them voted for the black candidate. This is more than 20 percentage points greater for black cohesion than Loewen observed in the three congressional contests that he studied, all of which occurred between 1980 and 1984. White cohesion in the more recent congressional contests, especially after the initial Clyburn election in 1992, is not only much less than the black cohesion but is also lower than the figures reported by Loewen for the early 1980s. Thus while five percent or fewer of the black voters supported the white candidate, Clyburn often got at least 30 percent of the white vote and is almost always estimated to have taken more than a quarter of it. Whites have become somewhat more willing to vote for a black candidate while blacks have become far less willing to support a white candidate.

(See Table 8)

An analysis of South Carolina gubernatorial election returns indicates that the gubernatorial and congressional white vote is slipping away from Democratic candidates. While several Democratic members of Congress were able to attract substantial shares of

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[32] *Thornburg v. Gingles*, 476 U.S. 30 (1986).

[33] Gary King. 1997. *A Solution to the Ecological Inference Problem*. Princeton: Princeton University Press.

the white vote sometimes exceeding 60 percent in the 1986-1990 elections, more recently, Democrats struggled to achieve even a third of the white vote.[34]

One of the explanations for the change may be that the contests observed by Loewen were either Democratic primaries or runoffs, while those reported in Table 8 were general elections. Thus in the more recent elections, voters had a partisan cue available which they did not have in the Democratic primaries and runoffs studied by Loewen.

Before the House Judiciary subcommittee holding hearings on the extension of the Voting Rights Act in 1981, Loewen testified that, "Bloc voting is not diminishing, or if it is, only at a glacial rate. By state, that includes a division of the pre-1975 elections versus post-1975 elections across the South, I found that that the proportion of whites voting white decreased from 94 to 92 percent, hardly much movement."[35] The congressional results from South Carolina for the 1990s indicate a substantial reduction in white voting cohesion from what Loewen reports at the time of the most recent extension of the Voting Rights Act.

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[34] Ronald E. Weber. Preliminary Report on Liability Issues for Hearing in *Leonard v. Beasley*. July 7, 1997. The trend was for Democratic candidates to decline and drop toward the share of the white vote cast for Michael Dukakis and Bill Clinton and their presidential bids. These Democratic nominees attracted less than a quarter of the white vote in the 1988 and 1992 elections.

[35] Testimony of James H. Loewen before the subcommittee on Civil and Constitutional Rights of the Committee on the Judiciary of the House of Representatives, extension of the *Voting Rights Act* , Part I, p. 271 (May 19, 1981).

In that same testimony, Loewen does sound a positive note. "By 1991 I hope that white bloc voting is decreased, so that blacks are not shut out by such policies, and so that we can infer that whites no longer oppose a possibility of black political power with such unanimity. I think there is potential for such a finding at that time, but the factual situation today is quite different."[36] As Table 4 shows, by 1991, African Americans held 405 public offices in South Carolina, up from 227 that were held at the time of Loewen's testimony. During the decade, the number of black county officers and the number of black school board members had more than doubled, while the number of municipal office holders had increased from 96 to 171.

Loewen then further opines that in black-white contests, "characteristics of the candidate seem to make little difference to white voters.... Among whites then, race typically determines election outcome, nothing but race."[37] Later in his testimony, Loewen elaborates,

> I think what is happening is that the blacks are going by qualifications, incumbency, well-knownness on the part of both the black and white candidates. That indicates that a substantial part of the black population is not routinely bloc voting. And, of course, I argued perversely that the white population, which does not usually show this kind of variation, thereby does show that race is the only factor that makes a difference to them.[38]

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[36] *Ibid.*, p.273.

[37] *Ibid.*, p. 271.

[38] *Ibid.*, p. 276.

The evidence from the 1990s might now be interpreted as just the reverse of what Loewen concluded. That is, it is the black population that is voting cohesively with at least 95 percent of the African-American vote going for the black candidate, while the variation appears among white voters where between a quarter and a third are willing to cast a ballot for the African-American candidate.

Table 9 presents comparative data on white support for white Democratic congressional candidates in South Carolina. Results show that only in 1992 did a white Democrat, John Spratt attract the bulk of the white vote. In the next three elections, Spratt's vote share was in the 40 percent range. For 1996 and 1998, we have estimates for non-incumbent Democratic nominees. These candidates receive between one-sixth and one-third of the white vote. Thus they tend to do no better than the African-American member of Congress from South Carolina, James Clyburn. However, with the exception of Darrell Curry, the Democratic nominee in 1996 for the Fourth District, the non-incumbent white Democrats achieved roughly the same share of the white vote as Clyburn managed once he established himself as an incumbent. Curry, however, ran more poorly among voters than Clyburn did in his first bid for Congress.

(See Table 9)

Although not shown here, the Democratic candidates whether black or white achieved overwhelming shares of the black vote. In 1998, the two white Democratic challengers ran as well among black voters as did the long-time incumbent John Spratt in

the Fifth District. Indeed, the two white challengers did as well among black voters as James Clyburn did.[39]

These new figures indicate that the Loewen observation may well need modification. A restatement now might be that for black voters the only thing that is important is party—so that blacks will vote overwhelmingly for the Democratic nominee regardless of that person's race or qualifications—and will not vote for a Republican, regardless of the Republican's qualifications or status as an incumbent, a challenger, or a contestant for an open seat. While party also seems to be important as a correlate of white voting behavior, there are more whites willing to vote for a black Democrat than there are blacks willing to vote for a white Republican.

David Epstein and Sharyn O'Halloran take into consideration the greater cohesion of black than white voters in South Carolina. In an analysis of South Carolina state Senate elections from 1988 through 1994, they conclude that the black community has an equal opportunity of electing its preferred candidate in a district once it is 46.7 percent black in its voting age population.[40] While higher concentrations of African Americans increase the likelihood that their preferred candidate will prevail, the rates at which blacks register and vote, combined with the cohesiveness of the black and white

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[39] Charles S. Bullock, III and Richard E. Dunn. The Demise of Black Districting and the Future of Black Representation. *Emory Law Journal*, 48 (Fall 1999): 1248.

[40] David Epstein and Sharyn O'Halloran. A Social Science Approach to Race, Redistricting, and Representation. *American Political Science Review* 93 (March 1999): 189.

electorate, now enables African Americans to determine an electoral outcome even when they constitute less than half of the voting age electorate.

John Ruoff has also examined the question of how heavily black a district must be for African-American candidate preferences to succeed. Ruoff estimated that blacks had an 85 percent chance of electing their preference once the total population of a district reached between 57 and 58 percent black.[41] The Ruoff estimates were based upon elections held between 1980 and 1992. Thus his data base differs from the more recent set of elections considered by Epstein and O'Halloran and Ruoff focuses on the black percentage in the total population, while Epstein and O'Halloran consider voting age population. Finally, Ruoff sets an 85 percent threshold for success while Epstein and O'Halloran use a 50 percent probability for success. It appears very likely that Ruoff might also agree that blacks have at least an equal chance of electing their preferred candidates even in districts in which whites constitute a slight majority of the voting age population.

Original estimates of white support for Democratic congressional candidates since 2000 appear in Table 10. In five contested congressional districts in 2000, the Democratic nominee received between 18.5% (district 3) and 47.1% (district 5, held by long-time incumbent Jack Spratt) of the estimated white vote. The second-highest estimated white support for a Democrat was in congressional district 6, where black incumbent James Clyburn carried an estimated 37.4% of the white vote. By comparison,

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[41] Cited in Orville Vernon Burton. Legislative and Congressional Districting in South Carolina. 1998. In *Race and Redistricting in the 1990s*. Edited by Bernard Grofman. New York: Agathon Press. p. 297.

the Gore-Lieberman ticket garnered an estimated 25% of the white vote statewide. Three congressional seats were contested by both major parties in 2002. In those districts, the white vote was heavily Republican, with Democrats pulling just 16.8% in district 4 and 18.4% of the white vote in district 3, while incumbent Democrat James Clyburn captured an estimated 31.1% of the white vote in district 6. In 2004, just four congressional districts were contested by Democrats—districts 1 and 3 were conceded without opposition. In congressional district 4, just 13.5% of the estimated white vote went for the Democratic challenger, and in district 2 just 19.7% of the estimated white vote went for the Democrat. Democratic incumbents Spratt (49.4% of the white vote in district 5) and Clyburn (30.6% of the white vote in district 6) ran ahead of the estimated white vote for Democrats in the President and US Senate elections(22.4% and 26.9% respectively).

(See Table 10)

Results of statewide elections for state offices in South Carolina for 1998 and 2002 appear in Table 11. The range of the estimated Democratic share of the white vote in 1998 is from a low of 28.9% in the secretary of state contest to a high of 46.9% in the superintendent of education contest. The second-highest white vote share for a Democrat came in the governor's race, where challenger Jim Hodges upset incumbent Republican David Beasley, pulling an estimated 40.7% of the white vote according to ecological regression analysis. Exit polls stated the white vote for Hodges at 38%, and 90% of the black vote for Hodges.[42] In the race for lieutenant-governor, incumbent Republican Bob Peeler defeated challenger and former lieutenant-governor Nick Theodore. Theodore garnered an estimated 30.1% of the white vote. In two open seat contests, for

[42] Leigh Strope, 1998. Hodges wins in upset. Associated Press, November 3.

Superintendent of Education and Comptroller, Democrats pulled an estimated 46.9% and 39.4% of the white vote. In the Treasurer contest, a Republican incumbent was bested by the Democrat he ousted in 1994, who pulled an estimated 36.8% of the white vote. In the remaining Republican incumbent contests, Democrats pulled an estimated 33.6%, 29.6%, and 28.9% of the white vote respectively.

The 2002 election results indicate further decay of the support for Democrats in general among white voters. Of the eight, contested statewide offices in South Carolina in 2002, four were held by Democratic incumbents and four were vacated by incumbent Republicans who ran against the incumbent governor Jim Hodges (D). Of the four Democratic incumbents running in 2002, two—Governor Hodges and the Comptroller Jim Lander—were defeated. Hodges pulled an estimated 33.5% of the white vote, -7.2 points from 1998, while Lander pulled an estimated 31.2% of the white vote, -8.2 points from 1998. The successful Democratic Superintendent of Education and Treasurer pulled an estimated 47.0% and 37.8% of the white vote respectively, which represented slight gains over 1998.

In the open seats, two of the four Democratic candidates were African American—Steve Benjamin for Attorney General, and Rick Wade for Secretary of State. Benjamin pulled an estimated 27.9% of the white vote, while Wade captured an estimated 26.1% of the white vote. The white Democratic candidate for Lieutenant-Governor had an estimated 28.3% support among South Carolina whites, while the losing white Democrat running for Agriculture Commissioner pulled 33.8% of the white vote, or about the same as the incumbent Democratic Governor in his losing effort and better than the incumbent Democratic Comptroller in his failed reelection bid.

Analysis of the black vote (not shown here) reveals consistent support well in excess of 90% for Democratic candidates. The white vote in recent elections shows variability based on incumbency status of the contest, with incumbent Democrats sometimes pulling more of the white vote than open seat Democrats or challengers. Since 2000, the vote among whites for black Democratic candidates has been consistent with that of white candidates of the same incumbency status, while the black vote is largely fixed in the most recent elections.

Table 1

REPORTED REGISTRATION BY RACE IN SOUTH CAROLINA AND OUTSIDE THE SOUTH, 1980-2004

	1980	1982	1984	1986	1988	1990	1992	1994	1996	1998	2000	2002	2004
South Carolina													
Black	61.4	53.3	62.2	58.8	56.7	61.9	62	59	64.3	68	68.6	68.3	71.1
White	57.2	54.5	57.3	56.4	61.8	56.2	69.2	62.6	69.7	67.9	68.2	66.2	74.4
Non-South													
Black	60.6	61.7	67.2	63.1	65.9	58.4	63	58.3	62	58.5	61.7	57	na
White	69.3	66.7	70.5	66.2	68.5	64.4	70.9	65.6	68.1	63.9	65.9	63	na

Source: Various post-election reports from the U.S. Bureau of the Census.

3025

Table 2

REPORTED TURNOUT BY RACE IN SOUTH CAROLINA AND OUTSIDE THE SOUTH, 1980-2004

	1980	1982	1984	1986	1988	1990	1992	1994	1996	1998	2000	2002	2004
SC													
Black	51.3	38.9	51.4	42	40.7	44.6	48.8	38.7	49.9	42.8	60.7	48.7	59.5
White	51.7	37	47.9	41.3	52.3	42	61.6	49.4	56.2	48.8	58.7	45.1	63.4
Non-South													
Black	52.8	48.5	58.9	44.2	55.6	38.4	53.8	40.2	51.4	40.4	53.1	39.3	na
White	62.4	53.1	63	48.7	60.4	48.2	64.9	49.3	57.4	45.4	57.5	44.7	na

Source: Various post-election reports from the U.S. Bureau of the Census.

Table 3

Registration and Turnout by Race in South Carolina, 1972-2004

	Registration		Turnout		Turnout Rate	
Year	Black	White	Black	White	Black %	White %
1972	224,854	666,510	152,546	533,812	67.84224	80.09062
1974	261,110	736,302	120,799	416,126	46.26364	56.51567
1976	284,926	827,810	192,170	620,878	67.44558	75.00248
1978	291,486	804,742	157,567	485,761	54.05646	60.36233
1980	319,826	914,363	222,580	696,901	69.59409	76.2171
1982	341,709	886,963	189,908	497,990	55.57594	56.14552
1984	388,948	1,005,186	262,476	754,155	67.48357	75.02641
1986	368,954	928,767	197,746	572,810	53.59638	61.67424
1988	388,255	1,047,722	245,304	796,542	63.18116	76.02608
1990	358,469	995,933	184,743	608,871	51.53667	61.13574
1992	387,624	1,149,516	286,911	950,556	74.01786	82.69185
1994	376,981	1,122,608	203,243	749,877	53.91333	66.79776
1996	489,850	1,324,927	294,983	908,503	60.21905	68.57004
1998	552,066	1,469,697	281,289	817,195	50.95206	55.60296
2000	622,244	1,643,955	284,354	832,582	45.69815	50.64506
2002	557,342	1,490,026	284,354	832,582	51.01966	55.87701
2004	659,366	1,655,816	433,732	1,197,416	65.78016	72.31576

Source: Biennial reports of the South Carolina Board of Elections.

TABLE 4

NUMBER OF AFRICAN-AMERICAN ELECTED OFFICIALS
IN SOUTH CAROLINA, 1969-2001

Year	Total	County	Municipal	School Board
1969	28	4	18	2
1970	38	2	30	2
1971	61	5	37	7
1972	66	7	41	6
1973	99	15	44	24
1974	116	20	57	24
1975	132	22	56	26
1976	148	23	67	29
1977	182	30	69	48
1980	238	38	100	65
1981	227	33	96	58
1984	263	37	130	65
1985	310	60	128	95
1987	340	65	135	114
1989	373	68	149	128
1991	405	75	171	125
1993	450	81	188	139
1995				
1997	542	75	248	171
1999	542	72	261	166
2001	534	83	252	157

Source: Various volumes of *The National Roster of Black Elected Officials* (Washington, D.C.: Joint Center for Political and Economic Studies).

Table 5

RACIAL MAKEUPS OF THE SOUTH CAROLINA LEGISLATURE

1965-2005

Year	SC Senate	% Black	SC House	% Black
1965	0	0	0	0
1967	0	0	0	0
1969	0	0	0	0
1971	0	0	3	2.419355
1973	0	0	4	3.225806
1975	0	0	12	9.677419
1977	0	0	13	10.48387
1979	0	0	13	10.48387
1981	0	0	15	12.09677
1983	1	2.173913	15	12.09677
1985	4	8.695652	16	12.90323
1987	4	8.695652	16	12.90323
1989	5	10.86957	16	12.90323
1991	6	13.04348	17	13.70968
1993	7	15.21739	18	14.51613
1995	6	13.04348	24	19.35484
1997	8	17.3913	26	20.96774
1999	7	15.21739	26	20.96774
2001	7	15.21739	24	19.35484
2003	7	15.21739	25	20.16129
2005	8	17.3913	25	20.16129

TABLE 6

RESULTS FOR 2002 SOUTH CAROLINA STATEWIDE CONTESTS LOST BY DEMOCRATS

Office	Race of Democrat	Votes for Democrat	Votes for Republican
Senator	White	487,359	600,010
Governor	White	521,140	585,422
Lt. Governor	White	498,431	573,734
Secretary of State	Black	463,501	610,799
Attorney General	Black	482,560	601,931
Comptroller Gen.	White	485,748	583,079
Commissioner of Agriculture	White	525,595	537,168

Source: South Carolina Election Board Web Page

TABLE 7

TURNOUT BY RACE IN SOUTH CAROLINA DEMOCRATIC PRIMARIES, 1984 - 2004

Year	Total	Nonwhite	% Nonwhite
1984	373,258	130,998	35.1
1986	359,577	135,018	37.5
1988	334,615	116,056	34.7
1990	219,755	95,028	43.2
1992	274,032	112,169	40.9
1994	314,341	136,342	43.4
1996	206,354	107,130	51.9
1998	149,257	73,715	49.4
2000	194,796	93,558	48.0
2002	114,346	70,003	61.2
2004	184,288	106,917	58.0

Source: South Carolina Secretary of State

Table 8

RACIAL VOTING AND PARTICIPATION PATTERNS IN SOUTH CAROLINA'S SIXTH CONGRESSIONAL DISTRICT
(Percentages)

			WHITES				BLACKS			
	Race	Party	OLS	EI	HP	(N)	OLS	EI	HP	(N)
1992										
Clyburn	B	D	22.7	29.5	20.4	(23)	100	96.2	97.0	(44)
Chase	W	R	77.3	70.5	79.6		0.0	3.8	3.0	
1994										
Clyburn	B	D(I)	25.7	32.1	25.2	(22)	100	95.0	96.9	(45)
McLeod	W	R	74.3	67.9	74.8		0.0	1.3	2.5	
1996										
Clyburn	B	D(I)	30.3	35.7	29.7	(16)	100	95.2	96.7	(46)
McLeod	W	R	69.7	64.3	70.3		0.0	4.8	3.3	
1998										
Clyburn	B	D(I)	32.0	37.1	30.8	(18)	100	99.0	97.8	(42)
McLeod	W	R	68.0	62.9	69.2		0.0	1.0	2.2	

OLS = ecological regression; EI = district-level estimates from King's (1997) method for ecological inference; HP = racially homogenous precincts; I = incumbent; C = challenger; OS = open seat

Source: Charles S. Bullock, III, and Richard E. Dunn, "The Demise of Racial Districting and the Future of Black Representation," *Emory Law Journal* 48 (Fall 1999): 1209 - 1253.

TABLE 9

WHITE SUPPORT FOR WHITE DEMOCRAT
HOUSE CANDIDATES, 1992-1998
(Percentages)

		State	Dist.	Candidate	White Support OLS	EI	HP	(N)
1992								
	Spratt	SC	5	I	52.1	52.0	52.1	(115)
1994								
	Spratt	SC	5	I	42.1	43.6	43.7	(115)
1996								
	Dorn	SC	3	C	29.4	29.3	31.6	(153)
	Curry	SC	4	C	16.7	17.9	20.1	(129)
	Spratt	SC	6	I	42.4	42.3	38.6	(101)
1998								
	Frederick	SC	2	C	27.1	29.6	30.7	(96)
	Reese	SC	4	OS	31.4	32.8	33.7	(123)
	Spratt	W	5	I	45.1	48.6	47.6	(93)

OLS = ecological regression; EI = district-level estimates from King's (1997) method for ecological inference; HP = racially homogenous precincts; I = incumbent; C = challenger; OS = open seat

Source: Charles S. Bullock, III, and Richard E. Dunn, "The Demise of Racial Districting and the Future of Black Representation," *Emory Law Journal* 48 (Fall 1999): 1209 - 1253.

TABLE 10

ECOLOGICAL REGRESSION ESTIMATES OF WHITE SUPPORT FOR DEMOCRATIC CONGRESSIONAL CANDIDATES, 2000 & 2004, CONTESTED RACES

	2000	*2002*	*2004*
Congress, CD1	26.9	-----	-----
Congress, CD2	28.5	-----	19.7
Congress, CD3	18.5	18.4	-----
Congress, CD4	-----	16.8	13.5
Congress, CD5	47.1	-----	49.4
Congress, CD6	37.4*	31.1	30.6*
President (state)	25.0		22.4
US Senate '04(state)			26.9

*African-American candidate.

Source: Computed by authors from data obtained from South Carolina Secretary of State elections website (http://www.state.sc.us/scsec/stats.html).

TABLE 11

ECOLOGICAL REGRESSION ESTIMATES OF WHITE VOTER SUPPORT FOR DEMOCRATIC STATEWIDE CANDIDATES IN 1998 AND 2002

	1998	*2002*
Adjutant-General	29.6++	----- ++
Agriculture Comm.	----- +	33.8
Attorney General	33.6++	27.9*
Comptroller	39.4	31.2+
Governor	40.7++	33.5+
Lieut. Governor	30.1++	28.3
Sec'y State	28.9++	26.1*
Supt. Of Education	46.9	47.0+
Treasurer	36.8++	37.8+

*African-American candidate.

+Incumbent Democrat.

++Incumbent Republican

Source: Computed by authors from data obtained from South Carolina Secretary of State elections website (http://www.state.sc.us/scsec/stats.html).

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Executive Summary of the Bullock-Gaddie Assessment of Voting Rights Progress in Texas

By Edward Blum and Abigail Thernstrom

Voting rights progress in Texas has consisted of a steady growth of minority voter mobilization, registration, and participation in the election process, and an increase in minority candidacies and the election of minority representatives. The state came under Section 5 coverage in 1975, triggered by the linguistic minority provision due to the use of English-only ballots.

Census estimates show Latino voter registration and participation holding stable over the past two decades. Latino participation in Texas compares favourably with figures for the rest of the nation. In contrast to the Census Bureau estimates that show little longitudinal change, Spanish surname registration data maintained by Texas indicate an increase in Hispanic voter registration. From 1992 to 2004, the share of the Texas registrants who have Spanish surnames has increased by more than 40 percent so that the proportion of registered voters with a Spanish surname is only slightly less than the share the state's citizen voting age population that is Hispanic.

The numbers of Latinos and African Americans serving in Congress and the state legislature have grown since Texas was brought under Section 5 of the Voting Rights Act in 1975. Following the 2003 congressional redistricting African Americans constitute almost a tenth of the delegation and a quarter of the districts have Hispanic majorities although two of these lack Hispanic majorities when voting age citizens are considered. In all but one of these districts, the winner of the general election is the candidate of choice of most Hispanics and the remaining district elects a Hispanic Republican. In the congressional delegation and the state Senate, the proportion of districts electing a Hispanic candidate of choice is consistent with the Hispanic citizen VAP share in the last census.

Minorities' numbers are increasing in the congressional delegation and the state legislature, while white Democrats are becoming scarce. After the 2004 election, only three of the eleven Democrats representing Texas in Congress were Anglo Democrats. The Texas House had fewer Anglo than Latino Democrats. In the Senate, the minority Democrats outnumbered the Anglo Democrats. The evidence from these legislative delegations dovetails with the patterns derived from statewide elections to underscore that Democrats win in districts having heavy concentrations of minority voters.

Currently, there are three African-Americans and two Hispanics holding statewide elective office out of a total of twenty-seven offices. No Hispanic-preferred candidate

has prevailed statewide since 1996, even though Hispanics such as former Secretary of State Tony Garza (now Ambassador to Mexico) and former Supreme Court Justice Alberto Gonzales (now US Attorney General) have won statewide elections as Republicans during the 1990s.

No Democrat has prevailed in a statewide contest since 1996, and the decline of voter support in general – and Anglo voter support in particular – is consistent for all Democrats seeking all offices in Texas, regardless of the race of the candidate.

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An Assessment of Voting Rights Progress in Texas

In August 2005, Texas joined California, Hawaii and Mexico to become the fourth state in which most residents were not Anglo. According to Census Bureau estimates, 50.2 percent of the Texas population now belonged to a minority group.

When the initial Voting Rights Act was crafted under the watchful eyes of President Lyndon Johnson, Texas was one of four southern states not caught by the trigger mechanism in Section 4. It is hardly surprising that the Texas president would set a threshold that would not bring his home state under the most demanding features of the legislation. The history of the Lone Star state is not free of racial disfranchisement, as University of Houston professor and Texas politics maven Richard Murray points out:

> In the immediate aftermath of the Civil War, blacks became a political force in Texas in counties that had high percentages of slaves. The Twelfth Legislature, elected under a new constitution pushed through by Radical Republicans, included two black senators and nine black representatives. Within a few years, however, white conservative Democrats regained control of Texas politics and began the systematic disenfranchisement of the African-American population, which was completed with the approval of a state poll tax in 1901 and the establishment of a white primary system. By 1906 there were only about 5,000 black voters on the rolls.1

Murray goes on to note that the state maintained the white primary until 1944, and the poll tax remained a prerequisite for participation in state elections until 1966. Although political scientist V. O. Key dismissed the poll tax as a significant source of black disenfranchisement at the time of its adoption, later scholars assert that it and the white primary excluded Latinos as well as blacks.2 Nonetheless, black participation in Texas was sufficiently high that the initial Voting Rights Act trigger did not snare the state.

The notable successes achieved by African-Americans in Section 5 states made Texas Latinos eager for a similar legislative assist in promoting political activities among their population. A major impetus for the extension of the legislation in 1975 that included

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1 Richard W. Murray. "Richard W. Murray Report", at page 12; see also Robert Brischetto, David R. Richards, Chandler Davidson, and Bernard Grofman, "Texas" in Chandler Davidson and Bernard Grofman, eds., *Quiet Revolution in the South: The Impact of the Voting Rights Act, 1965-1990* (Princeton, NJ: Princeton University Press, 1994).

2 V. O. Key, Jr., *Southern Politics in State and Nation* (Knoxville, TN: Tennessee Press, 1949; 1984) especially chapters 27 and 28. See also Brishetto, et al, *op. cit.*; and Jerry L. Polinard, "Expert Report of Jerry L. Polinard Regarding Congressional Redistricting Plan 1374C" Submitted in *Sessions v. Perry,* 2003, p. 5.

language minorities came from the Texas Latin community.3

The 1975 reauthorization extended the provisions of the act to address voting discrimination against linguistic minorities, defined as "American Indian, Asian American, Alaskan Natives" or people "of Spanish heritage." The reauthorization also recalibrated the presence of tests or devices and levels of electoral participation to November 1972. The definition of "test or device" was rewritten to encompass the provision of minority language electoral information to political subdivisions and states where a linguistic minority constituted more than five percent of the citizen voting age population (VAP). More precisely, the minority language provision triggers coverage of any jurisdiction or political subdivision where: Over five percent of the voting-age citizens were, on November 1, 1972, members of a single language minority group; registration and election materials were provided only in English on November 1, 1972; and fewer than 50 percent of the voting-age citizens were registered to vote or voted in the 1972 Presidential election. The minority language provision covered all of Alaska, Arizona, and Texas, and parts of California, Florida, Michigan, New York, North Carolina, and South Dakota.

Minority Registration and Turnout

While Texas was not subject to the initial Voting Rights Act or its 1970 amendments, the Commission on Civil Rights treated it like other southern states and reported the incidence of black registration in this state in the wake of the 1965 legislation. By 1967, the Voter Education Project (VEP) estimated that a higher proportion of the nonwhite than white population had registered to vote in Texas. The VEP estimates reported by the Commission on Civil Rights indicated that 61.6 percent of nonwhites compared with 53.3 percent of whites had signed up to vote.4 Texas was the only one of the eleven southern states in which nonwhite registration rates exceeded the white figure. The explanation for this unusual pattern may well reflect low levels of participation of the Hispanic population. The Civil Rights Commission report provides no separate figures for Spanish-surnamed voters so that surmise cannot be fully explored.

Every two years, the U.S. Bureau of the Census conducts a national survey to determine the rates at which Americans registered and voted in the previous general election. These surveys rely upon self-reports of the individuals who were sampled and, consequently are almost certainly inflated. However despite the problem of over-reporting, these figures – which now extend over almost two generations -- can be used to make rough comparisons across time and across different states and regions, on the assumption that the inflation is of similar magnitude across time and space. Most states do not indicate

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3 Abigail M. Thernstrom, *Whose Votes Count?* (Cambridge: Harvard University Press, 1987), pp. 48-62.

4 U.S. Commission on Civil Rights, *Political Participation* (Washington, D.C.: U.S Government Printing Office, 1968), pp. 222-223.

the race or ethnicity of registrants in their official registration records so these estimates are the best available figures.

Table 1 provides the Census Bureau estimates of participation by ethnicity in Texas from 1980 through 2004. The figures for Latino registration are relatively consistent over the generation included in the table. The lowest percentage of Latinos who report having registered is 39.1 percent in 2002. That figure, however, is not significantly different from figures reported in 1980, 1990, 1994, and 1998. On the high side, 45.5 percent of the adult Latinos report having been registered in 1988.

(Table 1 goes here)

The registration rates for Anglos are also relatively constant over time, ranging from a low of 58.2 percent in 1986 to a high of 66.5 percent in1988. In 1980, the difference between Anglo and Latino registration was 22.1 percentage points; 24 years later, the difference is 20 percentage points. The 2000 and 2002 figures present two of the smallest differences in recent years with white registration being approximately 18 percentage points higher than Latino registration. These are not the smallest differences since in the two mid-term elections of the 1980s, the differences were 15.1 and 16.2 percentage points.

White figures are impacted by the way the group is defined. In the earlier years, Hispanic "whites" were not excluded from the calculation of Anglos and in order to maintain comparability throughout the time period, the white figures presented in Tables 1 and 2 include Hispanics. Separate breakouts for non-Hispanic whites have been available for Texas only since 1998. At that time, the proportion of the voting age Anglo, non-Hispanics who reported registering stood at 69.4 percent, almost 30 percentage points higher than the figure for the Hispanics. In 2004, the non-Hispanic white registration figure had increased to 73.6 percent, again, approximately 30 percentage points higher than for Latinos.

The gap between Latino and black registration has grown over time. In 1980, the difference was approximately 17 percentage points while in 2004 it had reached almost 27 percentage points, the greatest in the time period covered.

The lower part of Table 1 provides registration figures for the non-South as a baseline for comparison. Throughout the time period, registration rates for Texas Latinos exceeded that for those outside the South. In most years, the difference has been roughly ten percentage points. The registration rates were most similar in 1980 when 39.3 percent of the Texas Latinos compared with 35.5 percent of those outside the region reported being registered. The largest difference occurred in 1988 when 45.4 percent of Texas Latinos but only 32.4 percent of non-southern Latinos had registered. Latino registration rates follow a see-saw pattern so in 2000, approximately ten percentage points more Texas than non-southern Latinos had registered while in 2002, the disparity shrank to 8.5 percentage points.

Table 2 provides the estimates made by the Census Bureau for Texas turnout by ethnic group. For each of the three groups a distinctive saw-tooth pattern is visible. In presidential elections, Latino turnout ranges from 27.9 percent in 1996 to a high of 33.2 percent in 1988. The first presidential election (1980) had almost an identical rate of Latino turnout as the most recent two, all between 29 and 30 percent of the voting age population. The share of the Latino voting age population that has turned out in mid-term elections ranges from a low of 15.3 percent in 1998 to a high of 26.8 percent in 1982. In presidential elections, Hispanic turnout is approximately 60 percent of the Anglo turnout. For the first two mid-term elections in the series, Latino participation ran at a bit above 60 percent of Anglo participation. Since then, Latinos have participated at only about half the rate of Anglos in mid-term elections.

(Table 2 goes here)

Prior to 1996, Anglos had the highest voting rates. In the five most recent elections, however, African-Americans have turned out to vote at higher rates than Anglos. Latinos have always been a distant third in turnout rates.

The bottom half of Table 2 provides data for the non-South as a point of comparison. In most years, Texas Latino participation rates track closely with those for Latinos outside of the South. In seven election years, participation rates were higher among Latinos in Texas than outside the South. The differences were usually small with the greatest disparity coming in 1988 when Latino participation in Texas was approximately seven percentage points higher than in the non-South. Only in 1998 was the turnout rate among non-southern Latinos substantially greater than for those in Texas.

Since 1992, Texas has reported figures for the number of registrants with Spanish surnames. This provides an indicator of the rates at which Latinos are registering to vote. The problem with using surnames is that some Latinos have Anglo names. This may be particularly true of Latinas who have Anglo husbands and take their names, or the offspring of such unions who nonetheless consider themselves Latino. Of course, the reverse pattern also occurs with Anglo women and their children often assuming the surnames of their Latino husbands. Thus the measure is not perfect but it does provide an additional indicator of the potential for Hispanic participation in Texas.

Table 3 reports the number of registrants as well as the proportion of registrants who have Spanish surnames. In 1992, Spanish-surnamed registrants made up approximately one-seventh of the Texas electorate. The numbers and share of all registrants with Spanish-surnames has grown so that by 2004, slightly more than one in five registrants had a Spanish-surname. The 20.75 percent of the registrants who have Spanish surnames is less than the 28.6 percent of the 2000 voting age population who were Latinos. However the presence of Latinos among registrants is approaching the 22.3 percent of the citizen voting age population that was Hispanic in 2000.

(Table 3 goes here)

Minority Officeholding

Texas has led all states in the number of Latino officeholders. In 1996, Texas boasted almost 1,700 Latinos in public office and by 2003 that number had swelled to almost 2,000, one of whom held a statewide post. California, the state with the second largest number of Latino officeholders, had roughly half the number found in Texas while New Mexico, the state that ranked third in the number of Latino officeholders, had fewer than one-third as many as Texas. Indeed, more than 40 percent of all Hispanics holding elected office in the nation served in the Lone Star State. The great bulk of the Texas Latino officeholders are Democrats although there is currently one Hispanic in the state's Republican congressional delegation and a few serve in the state legislature.

Minority Members of Congress

Henry Gonzales became the first Latino member in Congress from Texas when he won a special election in January of 1962. A second Hispanic, Kika de la Garza won in the southern most district of the state - - a district that includes Brownsville, Harlingen, and McAllen - - in 1964. The 1982 reapportionment which brought Texas three new seats coincided with the creation of a third heavily Hispanic district in south Texas that elected Solomon Ortiz. A fourth Latino joined the Texas delegation in 1984 when Albert Bustamante triumphed in a district that extended from the San Antonio suburbs to the border.

The redistricting of 1992 was intended to increase the number of Latino members in the House to six. One new district extended north out of the Rio Grande Valley while a second, strangely shaped, predominately Hispanic district was drawn in Houston. The Valley district performed and elected Frank Tejeda but in Houston, even though 54 percent of the VAP was of Hispanic origin, the leading Latino candidate, Ben Reyes, ultimately lost by 1,200 votes to an Anglo Democratic after a contested runoff. Reyes had led in the initial primary and then finished 180 votes behind Gene Green in the runoff. Reyes challenged the runoff results claiming that Republicans had participated. Although he prevailed in his litigation, he lost in the second runoff. 5
The 1992 elections also saw a Republican Latino elected as Henry Bonilla defeated Albert Bustamante after press reports surfaced that the incumbent was under investigation by the FBI for racketeering.6 Bonilla easily won the Republican primary

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5 Douglas D. Abel and Bruce I. Oppenheimer, "Candidate Emergence in a Majority Hispanic District: The 29th District in Texas," in Thomas A. Kazee, editor, *Who Runs for Congress? Ambition, Context and Candidate Emergence* (Washington, DC: Congressional Quarterly, 1994), pp. 45-66.
6 Murray, 2001, *op. cit.*

by beating an Anglo opponent. This geographically-expansive district that extends along the Texas-Mexican border from El Paso to San Antonio has a large number of Latino non-citizens so that the Anglo vote, which tends to be Republican, has a heightened influence. A sixth Latino won a seat in 1996 when Silvester Reyes triumphed in the El Paso open seat long held by Anglo Democrats.

After winning control of both legislative chambers in 2002 Republican lawmakers carried out a controversial mid-decade redistricting in which they created an additional 68.6 percent Hispanic seat anchored in the South Valley as shown in Table 4. As in 1992, Latino hopes for an additional member of Congress were dashed when an Anglo Democrat won the new district in 2004. Liberal Lloyd Doggett, whose Austin district had been splintered in the Republican gerrymander, ran for reelection in the new district that extended from the Valley to the Austin suburbs. Doggett easily defeated a Latina in the Democratic primary. As a consequence, the numbers of Latinos in Congress has not increased and Anglos now two districts that have large Latino concentrations since Rep. Gene Green continues to turn back challenges in the Houston district.

(Table 4 goes here)

One issue in the litigation involving the Republican plan of 2003 focused on the one Texas Republican Latino in Congress. Most experts who testified in the trial challenging the new plan did not consider Henry Bonilla to be Latinos' candidate of choice since most of them had backed his Democratic challengers. Allan Lichtman's estimates, reported in Table 5, are that in contested general elections from 1992 through 2002, Bonilla captured between 8 and 30 percent of the Hispanic vote along with 83 - 88 percent of the Anglo vote.7 The 2003 map reduced the likelihood that a Democrat could win in Bonilla's 23rd district.

The analysis performed for the G.I. Forum by Professor Richard Engstrom revealed that in three of six Hispanic-majority Valley districts the vote share for Hispanic-preferred candidates fell when compared to the map used in 2002. However only in one district – Bonilla's CD23 – did the share of votes for Hispanic-preferred candidates fall below a majority.8

(Table 5 goes here)

In sum, Texas currently has eight majority-Latino congressional districts. However, in one of these districts the Latino citizen VAP is so low that the state's own expert in the 2003 litigation did not consider it to be one likely to elect the candidate preferred by

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7 See, for example, Allan J. Lichtman, "Report of Allan J. Lichtman on Voting Rights Issues In Texas Congressional Redistricting," submitted in *Sessions v. Perry,* 2003, at 52-53.

8 Richard L. Engstrom, "REPORT: G.I. Forum v Texas," submitted in *Sessions v. Perry,* 2003.

Latinos.9 Of the seven remaining majority Latino districts, five elect Hispanics while two others elect Anglo Democrats who are the candidate of choice in general elections. Overall, 21.8 percent of Texas congressional districts are Latino majority districts that elect a candidate of choice in the general election, a number roughly comparable to the state's Latino citizen VAP in the most recent census.

Although Texas was not brought under Section 5 as a result of discrimination against African-Americans, the Department of Justice has been concerned about representation of blacks in Congress. In the 1950s, congressional mapmakers deliberately split the black electorate in Harris County to reduce its political influence. Electing an African American would wait until the 1971 redistricting when state Senator Barbara Jordan won the newly-obtained Texas congressional district in central city Houston.10

When Jordan arrived in Congress in 1972, she joined Georgia's Andrew Young as the South's first two African-American representatives elected in the 20th century. The seat that Jordan won has remained in the hands of an African-American ever since and is now filled by her third successor, Sheila Jackson Lee. During much of the time that the district had sent an African-American to Congress, it has had only a black plurality, not a black majority.

A second black female senator, Eddie Bernice Johnson, used her position to create a majority-black district in Dallas in 1992. Johnson easily won that district and continues to represent it. She has testified that but for the personal ambition of fellow Democrat Martin Frost, a black district could have been created in the metroplex a decade earlier.11

The mid-decade redistricting carried out by Republicans in 2003 resulted in a third African American going to Congress. Al Green won District 9, a district located in southwest Harris County that was 37 percent black and only 17.4 percent Anglo. Green bested Anglo Democrat Chris Bell, who had represented portions of the new district, in the Democratic primary by an almost 2:1 margin. Green dominated the black vote in the March 2004 primary, and easily won the November general election by a 72-26 margin. Bell had won the old 25th District in 2002, although he was not the candidate of choice of blacks in this district that was 22 percent black and 31 percent Hispanic.

Changes to the majority-black congressional districts in Dallas and Houston did not imperil the ability of African-American voters to elect their candidate of choice in 2004

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9 Ronald Keith Gaddie, "Expert Report of Ronald Keith Gaddie, Ph.D.," submitted for *Sessions v. Texas,* 2003, at 2, 8-9; but also see Andy Taylor, "28 CFR 51.27 (m) and (n) Voting Rights Analysis, Submitted October 20, 2003 for The State of Texas." Houston, TX, October 20 2003.

10 Richard Murray, "An Analysis of the Impact of Texas Congressional District Plan 01374C On Congressional Districts 18 and 30" submitted in *Sessions v. Perry*, November 2003, at 13.

11 Eddie Bernice Johnson testimony in *Sessions v. Perry.*

as reported in Table 6. African-American incumbents were reelected in 2004 with 89 percent and 93 percent respectively in districts 18 and 30 as neither faced major party opposition. Richard Murray, who provided evidence on behalf of the two black incumbents in the 2003 trial, indicated that changes to the Dallas district had "minimal" impact on the African-American population, though the new Latino wards might portend increased "black-brown" competition in the future.12 In Houston, Murray warned that the growing Latino presence might ultimately threaten blacks' ability to elect their candidate of choice in District 18.13

(Table 6 goes here)

Minority State Legislators

Latinos have a long history of serving in the Texas House. Data compiled by the Mexican American Legislative Caucus shows a Latino in the state House as far back as 1947. For the period recorded in Table 7, which begins with 1965, there have always been at least nine Latinos in the House. The number of Latino representatives almost doubles between 1973 and 1977, increasing from 10 to 18. The numbers hover around 20 until implementation of a new districting plan in 1993 when the number of rises to 26. Around the turn of the century, the number of Latinos in the Texas House reached 30 or 20 percent before falling back to 27 currently.

(Table 7 goes here)

Although Latinos had served in the Senate previously, none were members in 1965. Henry Gonzalez, who had been the only Hispanic senator, left the chamber in 1962 when he won a special election to Congress. Since a Latino senator won in 1966, the numbers have slowly increased reaching seven in 1997. At that point, Latinos held 22.6 percent of the Senate and 18.7 percent of the House seats. These figures are slightly below the 22.3 percent Hispanic in the 2000 citizen voting age population. The number of Hispanic senators has remained relatively constant since 1987 and has never exceeded seven in the 31-member chamber.

Table 7 also shows the numbers and percentage of African-American legislators. The first African-American legislator to be elected to the Senate, Barbara Jordan, triumphed in a Houston District in 1966. She held that seat for three terms before giving it up for a successful run for Congress. After a decade without an African-American state senator, Houston sent another black senator in 1982, and then four years later, Eddie Bernice Johnson, also destined to become a congresswoman, became the first black senator from Dallas. African-Americans continue to hold a pair of Senate seats so that their representation in the Senate is roughly half their percentage of the 2000 VAP.

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12 Murray, 2003, p.12.

13 *Ibid.*, p. 9.

African-Americans have been present in the House since 1967 without interruption. They experienced a substantial increase from two to eight after the 1971-72 redistricting. Their number increased again in 1977 to 13. In the almost three decades since then, the number of black representatives has fluctuated between 13 and 14.

State Minority Candidates

A number of minority candidates have sought statewide office in Texas. The state maintains a database showing candidate race for all levels of offices, for primaries and general elections. Of the 140 major party nominees for statewide office since 1992, six are African-American and thirteen are Hispanic, and six of the minority candidates are Republicans while thirteen are Democrats. Democratic minority candidates have met with limited success statewide. In 1992, Morris Overstreet was reelected to the Criminal Court of Appeals, and in 1994 Dan Morales was returned to the position of attorney general (see Table 14). Both left office after losing primary bids for higher office (Overstreet for attorney general, Morales for governor). Raul A. Gonzalez, now a lawyer in private practice, received 81 percent of the vote in his reelection to the state Supreme Court in 1994. Since 1996, no minority Democrat has won statewide office in Texas; indeed, no Democrat of any race has won statewide office. As indicated in Table 8, the high water mark for any Democrat since 1996 is 46.53 percent of the vote won by Charlie Holcomb in a bid for the Criminal Appeals court.

(Table 8 goes here)

Figures 1 and 2 illustrate the decline of the Democratic vote in general, and also the independence of this decline from the race of the Democratic candidates. Figure 1 illustrates the shift in the total vote share for Democrats running statewide, and also indicates Hispanic (yellow dot) and African-American (black dot) candidates. From 1992 to 1994 votes are shifting away from Democratic candidates although the range in vote share for Democrats is substantial and a number of Democrats attract a majority of the vote. Starting in 1996, no Democrat commands a popular plurality of the vote, though the range of votes obtained is wide. From 2000-2004, all Democratic candidates perform poorly, regardless of race, and the votes for most are tightly clustered in the low-40s. Nearly all of the loss of support by Democrats comes among Anglo voters. Figure 2 illustrates the shift in the Anglo vote share for Democrats running statewide, and also indicates Hispanic (yellow dot) and African-American (black dot) candidates. As indicated in Figure 2, in 1992 and 1994 seven Democrats running statewide received majority Anglo support, including all three of the successful minority candidates running for office. Since 1996, no Democrat has approached majority support among Anglo voters and since 2000 no Democrat has commanded over 35 percent of the Anglo voter statewide.

(Figures 1 and 2 go here)

Candidate race is not a factor in the decline of support for Democratic candidates in the 66 statewide contests from 1992-2004 where Democrats stood. A test of the difference of mean vote by race of candidate -- for the overall vote and the Anglo vote share – shows that differences in the vote shares for Anglo, African-American, and Hispanic candidates are insignificant (F=.285 and .940, respectively). When one subjects the percentage of the Anglo vote captured by Democrats to a multivariate test, controlling for the race or ethnicity of the Democratic candidate and a temporal counter set to 0 in 1992 and increasing by a value of +1 for each passing year, the decline of the Anglo vote for Democrats is not significantly related to a candidate's ethnicity. African-American and Hispanic candidates fare no worse than Anglo Democrats. Indeed, the coefficients for black and Hispanic candidates are actually positive.14 On the other hand, the negative coefficient reported in footnote 15 shows that the Democratic vote share drops by just more than two percentage points each election.

Democrats hoped to reverse their series of losses in 2002 when they fielded what became known as the "Dream Ticket" because of its ethnic diversity. Democrats nominated African-American Dallas Mayor Ron Kirk for the Senate over 1996 Senate nominee, Hispanic Victor Morales and Anglo congressman Ken Bentsen. For governor, Hispanic businessman Tony Sanchez prevailed, while for the powerful post of lieutenant governor, Democrats chose an Anglo, former comptroller John Sharp. The primary victories of Kirk and Sanchez (and Morales' attaining a runoff with Kirk for the Senate) affirmed the observation of Texas politics expert Richard Murray, that "Black and Hispanic candidates have real opportunities to secure the Democratic nomination both at the state level and in many districts where minority voters are a majority of the primary electorate . . . as the Democratic primary electorate has shrunk, it has become much more heavily black and Hispanic in composition."15 The dream ticket intended to appeal to all ethnic and racial groups turned out to be nothing more than a pipe dream, as Kirk ran little better than other Democrats among Anglo voters, Sanchez ran worse, and Sharp, the top Democratic vote-getter, only managed a paltry 34 percent of the Anglo vote. Richard Murray notes that "general election voting in Texas very much follows class and racial/ethnic lines," and, in Texas it is evident that race and party are structured together

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14 The result of the regression is:

	b
Intercept	45.48
Counter	-2.06*
African-American	5.05
Hispanic	0.54

Adjusted-R-Squared = .38; N=66; *p<.01, two-tailed test.

15 Murray, 2003, p. 10.

in vote choice, but the race of a candidate is not the issue. Democratic candidates, regardless of their ethnicity, are failing with Anglo voters.16

Texas political scientist Jerry Polinard observes that "the continuing impact of race on elections can be seen by studying recent statewide results. While Hispanic candidates are able to win elections in local areas and in districts that are drawn specifically for them or that are heavily Hispanic, Hispanics hold statewide offices in percentages far less that their percentage of the population as a whole."17 Hispanics constitute over a third of all adult Texans and 22.3 percent of the voting age population in the most recent census, and they held no more than two of the 27 statewide constitutional offices in Texas in the 1990s. However, since 1994, two Hispanics and four African Americans identified in the Texas state candidate database have been nominated for statewide offices as Republicans. Of these six, all but one – Teresa Doggett in 1994– prevailed in the general election, and all of the winners pulled 63 – 85 percent of the Anglo vote, showings consistent with the performance of Anglo Republicans.

Racial Voting Patterns

This section will review analyses of voting patterns in Texas elections from the previous decade. The emphasis will be on congressional elections with both primaries and general elections being reviewed. Each of the three major ethnic groups in Texas is frequently cohesive when going to the polls. Analyses of Democratic congressional primaries in Texas reveal various coalitions emerging among the three sets of players. Sometimes Anglos, African-Americans, and Latinos vote together, but in other contests, Hispanics coalesce with Anglos against the preference of black voters. A third arrangement is for black voters to align with Anglos against the preferences of Latinos. A fourth pattern is for blacks and Latinos to share a candidate preference that is rejected by Anglos. In general elections, partisanship trumps ethnicity as a voter cue.

16 Murray, 2001, p. 10.
17 Polinard, 2003, p. 5.

Primary Elections

Table 9 presents estimates of Anglo, African-American, and Hispanic voter support for candidates in select 1992 Democratic congressional primaries and runoffs. In four of the nine primaries analyzed, most Anglo, African-American, and Latino voters shared a candidate preference. Included in this group was the majority-Hispanic District 16, which renominated the Anglo incumbent. Despite facing a Latino challenger, incumbent Ron Coleman got his strongest support from Hispanic voters. Eddie Bernice Johnson also drew majority support for all ethnic groups in winning the nomination in the newly-created 30th District.

In Houston's District 18, blacks overrode the preference of Anglo and Hispanic voters to renominate the African-American incumbent Mickey Leland. In two other districts, minorities backed a Hispanic candidate while Anglos favored an Anglo. In District 29, black and Hispanic voters coalesced behind a Latino, Ben Reyes who lost to an Anglo Gene Green in the runoff.18 The black and Hispanic preference in District 23, Albert Bustamante, was renominated over Anglo opposition.

(Table 9 goes here)

The presence of substantial black and Latino communities in Houston and Dallas - Fort Worth has raised questions about the cohesion of those groups in party primaries. Table 10 contains homogenous precinct analysis and ecological regression estimates of minority and Anglo voter cohesion in select Democratic primaries in Dallas, Tarrant and Harris counties featuring minority-versus-Anglo candidates in Democratic primaries. While African-American and Hispanic voters coalesce in general elections, they do not necessarily unite behind a brown or black candidate when there is also an Anglo in the primary field.19 In each county, Morris Overstreet, the black candidate for attorney general, got the bulk of the African-American vote but was rejected overwhelmingly by other voters. In Tarrant and Dallas counties, black and Anglo voters united against DeLeon, the Latino candidate for agriculture commissioner who ran very well with Latino voters. In primaries that pit an Anglo against a Latino, blacks and Anglos coalesce in support of the Anglo candidate. When an Anglo faced an African American, Latinos and Anglos united behind the Anglo. 20 A similar pattern was observed in

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18 Initially Green was not the candidate of choice of Latino voters although as he gained seniority, he also gained Latino support and, as noted earlier, has been their candidate of choice in recent elections.

19 Ronald Keith Gaddie, "Supplement #3" submitted in *Del Rio v. Perry,* 2001.

20 The data presented are consistent with the finding of a three judge Federal panel in 2001, that African-American and Hispanic voters do not coalesce in Democratic primaries:

> The Latino and African-American plaintiffs thus present competing positions, reflecting a political reality that they are competitors in the political process. This

Austin municipal elections in the 1970s.21

(Table 10 goes here)

General Elections

African-American and Hispanic candidates can win Democratic Party nominations although these successes may not be based on the support from a coalition of the minorities. In statewide general elections, Anglo voter support for Democrats is declining. In congressional elections, Anglo support for Democratic candidates varies greatly, both in the majority-minority districts and in predominantly Anglo districts that have more minority residents than average.

Tables 11 through 14 present Jonathan Katz's ecological inference estimates of Anglo and minority voter support in Texas congressional districts from 1992 through 2000.22 Table 11 estimates the Hispanic versus non-Hispanic voter preferences for contested elections in seven Hispanic-majority districts. In 22 of the 27 contests, Hispanic and Anglo preferences differed in the general election. Hispanic and Anglo preferences concurred in congressional District 29 (1994, 1996, and 2000), District 20 (1998) and District 28 (1994). All involved incumbents although many of the contests in which the groups disagree also had incumbents. Eight uncontested general elections account for the balance of cases. Anglo preferences for Republicans are most pronounced in congressional District 23, though this district also shows the strongest Hispanic support for a Republican, incumbent Henry Bonilla. The Hispanic preference prevailed in every contest except those involving Rep. Bonilla, indicating that, while Anglo and Hispanic preferences were opposed, the racial polarization is not legally significant.

(Table 11 goes here)

During the 1990s African-Americans and other voters usually opposed each other in general elections in the two districts with black members of Congress. In the Dallas-based District 30, Table 12 shows that the non-black electorate never cast a majority of its votes for the Democratic candidate, Eddie Bernice Johnson. In contrast, in the 1996 and 2000 elections in Houston's CD 18, majorities of black and non-black voters lined up

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competition finds expression in an absence of cohesive voting between Latinos and African-Americans at the point in which it is meaningfully measured, the Democratic primaries.

See *Balderas v. Perry*, 6:01-CV-158, p. 12.

21 Charles S. Bullock, III, and Susan A. MacManus, "Voting Patterns in a Tri-Ethnic Community: Conflict or Cohesion: The Case of Austin, Texas, 1975-1985," *National Civic Review,* 79 (January-February, 1990): 5-22.

22 Jonathan N. Katz, "Report on Texas Congressional Redistricting: Minority Opportunities and Partisan Fairness," submitted in *Del Rio v. Perry,* 2001.

behind the Democrat. Despite disagreements in candidate choice between black and other voters in six of eight contested elections, the African-American choice always won.

(Table 12 goes here)

A review of Tables 11 and 12 shows that in heavily minority districts, the black electorate is more uniformly Democratic than are the Hispanic voters. Only congressional District 27 has Latino cohesion (more than 91 percent in each election) comparable to that exhibited among African Americans in Districts 18 and 30.

Table 13 presents results for eight districts with a greater than average black population in the 1990s. Black cohesion in these predominantly Anglo districts is usually comparable to that found in the districts that elected African Americans. With one exception African Americans preferred the Democratic candidate and in all but seven elections black cohesion exceeded 80 percent. Anglos gave more than 60 percent support to Democrats only twice while their support slips below 40 percent eight times. In 16 of the 32 cases for which Katz provided estimates, all of which involve only white candidates, black and non-black majorities supported the same candidate, a higher incidence of agreement than found in Tables 11 and 12 when the Democratic candidates were usually minorities.23

(Table 13 goes here)

Table 14 presents estimates for congressional District 24 in the Dallas-Fort Worth area. These figures show overwhelming African-American and Hispanic support for Martin Frost (D), while in two of the three elections, the Anglo vote went to Frost's Republican challenger.

(Table 14 goes here)

There is a clear racial structure to the partisan preferences of Texas voters. The white vote is now solidly Republican in statewide elections and in the congressional elections when the Democratic nominee is a minority. When the Democratic candidate is an Anglo, Anglo voters offer less support than do minority voters although white Democratic incumbents are more likely to carry the bulk of the Anglo vote than are even minority incumbents. Despite infrequently attracting majorities among Anglos, the minority-preferred candidate has consistently won in predominantly-minority districts, except of CD 23 represented by Republican Henry Bonilla since 1992.

Conclusions

23 Six Democrats escaped GOP opposition while in two other contests Katz's Ei models did not converge.

Voting rights progress in Texas has consisted of a stability of minority voter mobilization, an increase in minority candidacies and the election of minority representatives, and the emergence of a statewide partisan environment that militates against the election of minority-preferred candidates to statewide posts.

Census estimates show Latino voter registration and participation holding stable over the past two decades. Latino participation in Texas compares favourably with figures for the rest of the nation. In contrast to the Census Bureau estimates that show little longitudinal change, Spanish surname registration data maintained by Texas indicate an increase in Hispanic voter registration. From 1992 to 2004, the share of the Texas registrants who have Spanish surnames has increased by more than 40 percent so that the proportion of registered voters with a Spanish surname is only slightly less than the share the state's citizen voting age population that is Hispanic.

The numbers of Latinos and African Americans serving in Congress and the state legislature have grown since Texas was brought under Section 5 of the Voting Rights Act in 1975. Following the 2003 congressional redistricting African Americans constitute almost a tenth of the delegation and a quarter of the districts have Hispanic majorities although two of these lack Hispanic majorities when voting age citizens are considered. In all but one of these districts, the winner of the general election is the candidate of choice of most Hispanics and the remaining district elects a Hispanic Republican who has polled between 8 and 43 percent of the Hispanic vote during his tenure.24 In the congressional delegation and the state Senate, the proportion of districts electing a Hispanic candidate of choice is consistent with the Hispanic citizen VAP share in the last census.

While minorities' numbers are increasing in the congressional delegation and the state legislature, white Democrats are becoming scarce. After the 2004 election, only three of the eleven Democrats representing Texas in Congress were Anglo Democrats. The Texas House had fewer Anglo than Latino Democrats. In the Senate, the minority Democrats outnumbered the Anglo Democrats. The evidence from these legislative delegations dovetails with the patterns derived from statewide elections to underscore that Democrats win in districts having heavy concentrations of minority voters. When the electorate is overwhelmingly Anglo, Republicans usually win although some Democratic incumbents can hang on because of the name recognition they have developed or the reputation for service they have developed.

Currently, there are three African-Americans and two Hispanics holding statewide elective office out of a total of twenty-seven offices. No Hispanic-preferred candidate has prevailed statewide since 1996, even though Hispanics such as former Secretary of

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24 OLS and homogenous precinct estimates made by Lichtman and reported in Table 5 show Bonilla polling from 8 to 37 percent of the Hispanic vote while Katz's Ei estimates reported in Table 11 show Bonilla to be more attractive to Hispanic voters, taking from 30.5 to 43.3 percent of their votes between 1992 and 2000.

State Tony Garza and former Supreme Court Justice Alberto Gonzales (now US Attorney General) have won statewide elections as Republicans during the 1990s.

No Democrat has prevailed in a statewide contest since 1996, and the decline of voter support in general – and Anglo voter support in particular – is consistent for all Democrats seeking all offices in Texas, regardless of the race of the candidate. While the results of congressional elections suggest that minority Democratic candidates attract smaller shares of the Anglo vote than do Anglo Democrats, it is currently impossible for Democrats to win statewide in the Lone Star State. The fate of the 2002 Dream Ticket underscores the unacceptability of Democratic nominees regardless of their ethnicity. The black candidate for the U.S. Senate, the Latino nominee for governor and the Anglo candidate for lieutenant governor all went down to defeat despite being well funded and getting extensive media coverage.

TABLE 1

REPORTED REGISTRATION BY RACE IN TEXAS AND OUTSIDE THE SOUTH,

1980-2004

	1980	1982	1984	1986	1988	1990	1992	1994	1996	1998	2000	2002	2004
TEXAS													
Black	56.4	56.6	65.3	66.6	64.2	60	63.5	58.5	63.2	62.1	69.5	65.1	68.4
White	61.4	59.4	66	58.2	66.5	61.1	66.1	59.7	62.7	59.7	61.8	57.7	61.5
Latino	39.3	43.2	45.2	43.1	45.5	40	42.9	39.2	42.7	39.7	43.2	39.1	41.5
Non-South													
Black	60.6	61.7	67.2	63.1	65.9	58.4	63	58.3	62	58.5	61.7	57	NA
White	69.3	66.7	70.5	66.2	68.5	64.4	70.9	65.6	68.1	63.9	65.9	63	NA
Latino	35.5	33.9	39	33.2	32.4	30.4	32.9	29.1	33.8	31.9	32.7	30.6	NA

Source: Various post-election reports by the U.S. Bureau of the Census.

TABLE 2

REPORTED TURNOUT BY RACE IN TEXAS AND OUTSIDE THE SOUTH, 1980-2004

	1980	1982	1984	1986	1988	1990	1992	1994	1996	1998	2000	2002	2004
TEXAS													
Black	40.7	37.8	51.2	39.8	47	38.7	50.1	33.1	47.1	35.5	57.5	44.3	55.8
White	52.7	40.6	55.5	37.5	55.2	42.5	57.2	39.4	46.7	33.5	48.1	35	50.6
Latino	29.7	26.8	32.7	23.6	33.2	22.5	33.1	18.9	27.9	15.3	29.5	19.1	29.3
Non-South													
Black	52.8	48.5	58.9	44.2	55.6	38.4	53.8	40.2	51.4	40.4	53.1	39.3	NA
White	62.4	53.1	63	48.7	60.4	48.2	64.9	49.3	57.4	44.7	57.5	44.7	NA
Latino	29.8	25.8	32.8	23.8	26.8	20.5	27.4	20.8	26.3	21.4	26.8	18.2	NA

Source: Various post-election reports by the U.S. Bureau of the Census.

TABLE 3

SPANISH SURNAME VOTER REGISTRATION, 1992-2004

YEAR	TOTAL REGISTRATION	SPANISH SURNAME REGISTRATION	% REGISTERED
1992	8,444,786	1,216,514	14.40550418
1994	8,639,197	1,315,422	15.22620679
1996	9,538,779	1,559,789	16.35208238
1998	9,587,025	1,790,764	18.67903755
2000	10,267,241	2,002,942	19.50808401
2002	10,333,415	2,111,446	20.4331869
2004	10,958,702	2,274,125	20.75177334

TABLE 4

LATINO MAJORITY CONGRESSIONAL DISTRICTS IN TEXAS, 2002 AND 2004

A. 2002 DISTRICTS (BALDERAS MAP)

DISTRICT	CitizenVAP Balderas	SSVR Balderas	Expected* %Democrat	Observed** %Democrat
15	69.3	67.0	64.2	100.0
16	69.9	67.5	61.6	100.0
20	61.6	61.5	62.5	100.0
23	57.4	55.3	57.2	47.2
27	63.5	61.6	59.1	61.1
28	61.4	59.6	66.1	71.1
29	42.8	42.5	67.5	95.2

B.2004 DISTRICTS (HB-3 MAP)

DISTRICT	CitizenVAP HB-3	SSVR HB-3	Expected* %Democrat	Observed** %Democrat
15	58.5	56.7	60.7	57.8
16	69.9	67.5	61.6	67.5
20	60.8	59.9	63.1	65.5
23	45.8	44.0	48.7	29.4
25	55.0	55.6	72.5	67.6
27	60.4	58.0	58.7	63.1
28	56.2	54.3	61.7	59.0
29	46.7	45.9	64.5	94.1

Note: VAP and Citizen VAP figures are from the 2000 census; Spanish Surname Voter Registration is from the 2002 election cycle.

*"Expected" vote is % Democratic vote in 2002 Lieutenant-Governor's race in Texas, 2002

**Observed vote is actual % Democratic vote for candidate in respective election.

TABLE 5

ESTIMATES OF HISPANIC AND ANGLO VOTER PREFERENCES FOR HENRY BONILLA IN CONGRESSIONAL DISTRICT 23, 1992-2002

Year	OLS %Hispanic	OLS %Anglo	HP %Hispanic	HP %Anglo	Ei %Hispanic	Ei %Anglo
1992	23	87	32	90	30.5	85.4
1994	29	83	34	87	43.3	78.0
1996	30	83	32	89	37.7	88.5
1998	26	85	37	89	40.0	83.9
2000	20	83	32	88	34.6	78.4
2002	8	88	---	---	---	---

Source: Allan J. Lichtman, "Report of Allan J. Lichtman on Voting Rights Issues In Texas Congressional Redistricting," submitted in *Sessions v. Perry,* 2003; Allan J. Lichtman, "Report on Congressional Districts in Texas," submitted in *Del Rio v. Perry*, 2001. Ei estimates are from Jonathan N. Katz, "Report on Texas Congressional Redistricting: Minority Opportunities and Partisan Fairness," submitted in *Del Rio v. Perry,* 2001.

TABLE 6

BLACK ACCESS DISTRICTS, BALDERSAS (2002) AND HB-3 (2004)

DISTRICT	% Black VAP	% Latino VAP (SSVR)	Expected* %Democrat	Observed** %Democrat
2002				
18	42.1%	29.1% (14.2%)	76.4	76.9
30	40.3%	27.7% (11.4%)	74.2	74.3
2004				
9	36.5%	30.3% (13.7%)	71.0	72.2
18	40.3%	32.2% (16.0%)	75.0	88.9
30	41.0%	30.7% (12.5%)	78.5	93.0

*"Expected" vote is % Democratic vote in 2002 Lieutenant-Governor's race in Texas, 2002

**Observed vote is actual % Democratic vote for candidate in respective election.

TABLE 7

LATINO AND AFRICAN-AMERICAN STATE LEGISLATORS, 1965-2005

Year	Black Senate	Black House	Latino Senate	Latino House	Percent Black Senate	Percent Black House	Percent Latino Senate	Percent Latino House
1965	0	0	0	9	0	0	0	6
1967	1	2	1	10	3.225	1.333	3.225	6.667
1969	1	2	1	11	3.225	1.333	3.225	7.333
1971	1	2	1	9	3.225	1.333	3.225	6
1973	0	8	2	10	0	5.333	6.451	6.667
1975	0	9	2	14	0	6	6.451	9.333
1977	0	13	3	18	0	8.667	9.677	12
1979	0	13	4	17	0	8.667	12.90	11.333
1981	0	13	3	17	0	8.667	9.677	11.333
1983	1	13	3	21	3.225	8.667	9.677	14
1985	1	13	4	19	3.225	8.667	12.90	12.667
1987	2	13	6	19	6.451	8.667	19.354	12.667
1989	2	13	6	19	6.451	8.667	19.354	12.667
1991	2	13	5	22	6.451	8.667	16.129	14.667
1993	2	14	6	26	6.451	9.333	19.354	17.333
1995	2	13	6	27	6.451	8.667	19.354	18
1997	2	14	7	28	6.451	9.333	22.580	18.667
1999	2	14	7	30	6.451	9.333	22.580	20
2001	2	14	7	30	6.451	9.333	22.580	20
2003	2	14	6	27	6.451	9.333	19.354	18
2005	2	14	6	27	6.451	9.333	19.354	18

TABLE 8

CANDIDATE RACE AND ETHNICITY, MINORITY PREFERENCES, AND STATEWIDE ELECTION OUTCOMES IN TEXAS, 1992-2004

Year	Office	Candidate	%Vote	%Anglo Vote
1992	Railroad Commissioner	**Lena Guerrero(I)-D**	39.26	32.5
1992	Justice, Supreme Court, Place 1	Oscar H. Mauzy(I)-D	43.10	37.7
1992	Judge, Court of Criminal Appeals	**Pete Benavides(I)-D**	49.49	40.4
1992	Judge, Court of Criminal Appeals	Morris L. Overstreet(I)-D	***51.04***	53.3
1992	Justice, Supreme Court, Place 2	Rose Spector-D	***52.22***	46.8
1992	Judge, Court of Criminal Appeals	Charles F. (Charlie) Bai	***52.80***	50.9
1992	Justice, Supreme Court, Place 3	Jack Hightower(I)-D	***56.79***	55.6
1994	Commissioner of Agriculture	Marvin Gregory-D	35.98	24.0
1994	U. S. Senator	Richard Fisher-D	38.30	27.3
1994	Justice, Supreme Court, Place 3	Jimmy Carroll-D	43.24	40.2
1994	Justice, Supreme Court, Place 2	Alice Oliver Parrott-D	43.81	37.3
1994	Railroad Commissioner (Unexpired)	Mary Scott Nabers(I)-D	44.86	43.5
1994	Judge, Court of Criminal Appeals	Betty Marshall-D	45.53	40.5
1994	Governor	Ann W. Richards(I)-D	45.87	36.0
1994	Judge, Court of Criminal Appeals	Charles Campbell(I)-D	46.04	41.9
1994	Railroad Commissioner	James E. Nugent(I)	48.14	48.6
1994	Commissioner, General Land Office	Garry Mauro(I)-D	***50.19***	48.6
1994	State Treasurer	Martha Whitehead(I)-D	***50.29***	46.4
1994	Attorney General	**Dan Morales(I)-D**	***53.70***	55.1
1994	Comptroller of Public Accounts	John Sharp(I)-D	***55.48***	57.4
1994	Lieutenant Governor	Bob Bullock(I)-D	***61.48***	63.7
1994	Justice, Supreme Court, Place 1	**Raul A. Gonzalez(I)-D**	***81.31***	80.6
1996	Justice, Supreme Court, Place 3	John B. Hawley-D	15.89	10.2
1996	Railroad Commissioner	**Hector Uribe-D**	39.01	23.6
1996	Chief Justice, Supreme Court	Andrew Jackson Kupper-D	40.57	29.2
1996	Justice, Supreme Court, Place 2	Gene Kelly-D	42.66	32.7
1996	U. S. Senator	**Victor M. Morales-D**	43.94	28.9
1996	Judge, Court of Criminal Appeals	Bob Perkins-D	44.53	36.8
1996	Justice, Supreme Court, Place 1	Patrice Barron-D	45.51	34.1
1996	Judge, Court of Criminal Appeals	Frank Maloney(I)-D	46.20	35.7
1996	Judge, Court of Criminal Appeals	Charles Holcomb-D	46.53	38.7
1998	Governor	Garry Mauro-D	31.18	18.4
1998	Commissioner, General Land Office	**Richard Raymond-D**	39.85	28.4
1998	Justice, Supreme Court, Place 3	David Van Os-D	39.89	28.0
1998	Railroad Commissioner	Joe B. Henderson-D	40.63	33.3
1998	Justice, Supreme Court, Place 1	Mike Westergren-D	41.81	30.6
1998	Commissioner of Agriculture	L.P. (Pete) Patterson-D	42.08	31.7

Year	Office	Candidate	%Vote	%Anglo Vote
1998	Judge, Court of Criminal Appeals	Winston Cochran-D	42.21	32.3
1998	Justice, Supreme Court, Place 4	Jerry Scarbrough-D	43.09	33.7
1998	Attorney General	Jim Mattox-D	44.18	36.6
1998	Judge, Court of Criminal Appeals	Charles F. Baird-D	46.03	36.1
1998	Justice, Supreme Court, Place 2	Rose Spector(I)-D	46.47	36.3
1998	Lieutenant Governor	John Sharp-D	48.19	37.9
1998	Comptroller of Public Accounts	Paul Hobby-D	48.99	39.7
2000	U. S. Senator	Gene Kelly-D	32.34	17.7
2000	Judge, Court of Criminal Appeals	William R. Barr-D	43.08	29.7
2000	Presiding Judge, Criminal Appeals	Bill Vance-D	43.89	30.3
2002	Comptroller of Public Accounts	Marty Akins-D	32.92	18.3
2002	Commissioner of Agriculture	Tom Ramsay-D	37.81	21.7
2002	Judge, Court of Criminal Appeals	John W. Bull-D	39.14	24.4
2002	Governor	**Tony Sanchez-D**	39.96	21.5
2002	Judge, Court of Criminal Appeals	**J.R. Molina-D**	40.00	22.8
2002	Chief Justice, Supreme Court	Richard G. Baker-D	40.50	25.2
2002	Attorney General	Kirk Watson-D	41.08	24.4
2002	Commissioner, General Land Office	David Bernsen-D	41.48	28.0
2002	Railroad Commissioner	Sherry Boyles-D	41.48	29.3
2002	Justice, Supreme Court, Place 1	**Linda Yanez-D**	41.54	23.8
2002	Justice, Supreme Court, Place 2	Jim Parsons-D	41.88	27.0
2002	Judge, Court of Criminal Appeals	Pat Montgomery-D	42.60	26.8
2002	Justice, Supreme Court, Place 3	William E. Moody-D	43.23	28.7
2002	U. S. Senator	Ron Kirk-D	43.32	27.2
2002	Justice, Supreme Court, Place 4	**Margaret Mirabal-D**	45.90	29.4
2002	Lieutenant Governor	John Sharp-D	46.03	34.0
2004	Justice, Supreme Court, Place 9	David Van Os-D	40.76	24.4
2004	Railroad Commissioner	Bob Scarborough-D	40.94	28.5
2004	Judge, Court of Criminal Appeals	J.R. Molina-D	42.14	25.3

TABLE 9
ECOLOGICAL REGRESSION ESTIMATES OF RACIAL VOTING PATTERNS IN SELECTED TEXAS CONGRESSIONAL PRIMARY ELECTIONS OF 1992

Name/Race	Whites	Blacks	Hispanics
1992, Democratic Primary			
District 2			
Groce	14.3	5.0	14.9
Williamson	17.4	1.9	12.5
Wilson A	68.3	93.1	72.7
District 4			
Hall A	64.2	93.0	40.2
Sanders A	35.8	7.0	59.8
District 16			
Artalejo	1.2	11.0	6.1
Coleman-A	53.9	60.4	69.4
Jones	13.3	- 4.9	2.0
Ponzio H	31.5	33.5	22.4
District 18			
Leland B	-125.0	87.1	25.0
Spates	225.0	12.9	75.0
District 23			
Bustamante-H	21.1	71.2	83.6
Mulvaney	78.9	28.8	16.4
District 25			
Andrews-A	82.1	85.2	92.7
Whipple	17.9	14.8	7.3
District 29			
Burks B	5.5	15.4	- 1.1
Garcia H	34.2	- 6.2	17.9
Green A	80.8	35.4	1.1
Luna H	0.0	-16.9	27.4
Reyes H	-20.5	72.3	54.7
District 30			
Hanutz B	-70.0	6.1	.6
Johnson B	170.0	93.9	93.4

1992 Democratic Runoff

District 29			
Green A	151.6	40.6	14.4
Reyes H	-51.6	59.4	85.6

Source: Ronald E. Weber. "Preliminary Report of Ronald E. Weber in *Vera vs. Richards,*

TABLE 10
ESTIMATES OF MINORITY AND ANGLO VOTER COHESION IN DEMOCRATIC PRIMARIES IN DALLAS, TARRANT, AND HARRIS COUNTIES

	Ecological Regression			**Homogenous Precincts**		
	%Black	%Hisp.	%Anglo	%Black	%Hisp.	%Anglo
			TARRANT COUNTY			
1998 Agriculture Commissioner						
DeLeon (H)	17.8	77.8	33.3	20.5	87.5	26.6
Patterson (A)	82.2	22.2	66.7	79.5	12.5	73.4
1998 Attorney General						
Kelly (A)	2.5	18.7	18.8	3.0	18.9	10.4
Mattox (A)	23.8	>100	>100	26.9	67.6	64.5
Overstreet (B)	73.7	<0	<0	70.1	13.5	25.0
			HARRIS COUNTY			
2000 Constable #3						
Jones (A)	26.9	*	>100	32.3	47.7	79.6
Clowers (A)	14.6	*	23.1	18.0	10.8	15.7
Pappillion (B)	52.5	*	<0	49.7	41.5	4.6
1998 Agriculture Commissioner						
DeLeon (H)	51.4	73.7	7.7	50.6	87.1	39.2
Patterson (A)	48.6	26.3	92.3	49.4	12.9	60.8
1998 Attorney General						
Kelly (A)	13.7	38.2	30.8	11.1	30.6	7.2
Mattox (A)	19.1	>100	>100	20.4	53.4	62.1
Overstreet (B)	67.2	<0	<0	70.4	16.0	30.7
			DALLAS COUNTY			
1998 Agriculture Commissioner						
DeLeon (H)	23.4	80.8	36.3	52.1	96.1	46.1
Patterson (A)	76.6	19.2	63.8	47.9	3.9	53.9
1998 Attorney General						
Kelly (A)	1.8	9.7	7.8	1.9	4.0	5.4
Mattox (A)	34.1	100.0	88.7	36.2	75.4	67.6
Overstreet (B)	64.1	<0	3.5	61.9	20.6	27.0

TABLE 11

HISPANIC AND NON-HISPANIC VOTING BEHAVIOR IN MAJORITY-HISPANIC CONGRESSIONAL GENERAL ELECTIONS, ECOLOGICAL INFERENCE (Ei) ESTIMATES, 1992-2000

District/Year	Proportion Hispanic	Proportion Anglo	District/Year	Proportion Hispanic	Proportion Anglo
CD15			CD27		
1992	0.748	0.341	1992	0.912	0.242
1994	0.851	0.381	1994	0.933	0.35
1996	0.896	0.26	1996	0.946	0.409
1998	0.882	0.387	1998	0.948	0.489
2000	---	---	2000	0.91	0.431
CD16			CD28		
1992	0.746	0.202	1992	---	---
1994	0.769	0.351	1994	0.888	0.508
1996	0.921	0.391	1996	0.946	0.465
1998	---	---	1998	---	---
2000	0.929	0.294	2000	---	---
CD20			CD29		
1992	---	---	1992	0.643	0.43
1994	0.758	0.49	1994	0.857	0.502
1996	0.892	0.339	1996	0.745	0.566
1998	0.747	0.509	1998	---	---
2000	---	---	2000	0.891	0.552
CD23					
1992	0.695	0.146			
1994	0.567	0.22			
1996	0.623	0.115			
1998	0.6	0.161			
2000	0.654	0.216			

Source: Jonathan N. Katz, "Report on Texas Congressional Redistricting: Minority Opportunities and Partisan Fairness," submitted in *Del Rio v. Perry,* 2001.

TABLE 12

BLACK AND NON-BLACK VOTING BEHAVIOR IN CONGRESSIONAL DISTRICTS ELECTING AFRICAN AMERICANS, ECOLOGICAL INFERENCE (Ei) ESTIMATES, 1992-2000

District/Year	Proportion Black	Proportion Anglo	District/Year	Proportion Black	Proportion Anglo
CD18			CD30		
1992	0.947	0.332	1992	0.945	0.382
1994	0.965	0.47	1994	0.926	0.377
1996	0.945	0.62	1996	0.958	0.363
1998	---	---	1998	0.931	0.446
2000	0.941	0.549	2000	---	---

Source: Jonathan N. Katz, "Report on Texas Congressional Redistricting: Minority Opportunities and Partisan Fairness," submitted in *Del Rio v. Perry,* 2001.

TABLE 13

BLACK AND ANGLO VOTING BEHAVIOR IN NON-MINORITY-MAJORITY CONGRESSIONAL DISTRICTS, WITH HIGHER THAN AVERAGE MINORITY POPULATIONS, ECOLOGICAL INFERENCE (Ei) ESTIMATES, 1992-2000

District/Year	Proportion Black	Proportion Anglo	District/Year	Proportion Black	Proportion Anglo
CD1	16.10%		CD11	15.60%	
1992	---	---	1992	0.853	0.651
1994	---	---	1994	0.847	0.57
1996	0.883	0.463	1996	0.892	0.52
1998	0.93	0.541	1998	---	---
2000	0.98	0.505	2000	0.848	0.514
CD2	15.00%		CD22	14.30%	
1992	0.569	0.56	1992	---	---
1994	0.718	0.542	1994	---	---
1996	0.613	0.518	1996	0.21	0.312
1998	0.608	0.588	1998	0.503	0.294
2000	---	---	2000	0.596	0.292
CD5	16.30%		CD24	20.50%	
1992	0.974	0.528	1992	0.853	0.504
1994	0.863	0.438	1994	0.746	0.435
1996	0.7	0.902	1996	0.919	0.453
1998	0.902	0.363	1998	0.773	0.466
2000	0.853	0.371	2000	0.795	0.521
CD9	20.60%		CD25	23.00%	
1992	0.904	0.464	1992	0.936	0.412
1994	0.861	0.384	1994	0.921	0.379
1996	0.942	0.435	1996	0.928	0.389
1998	---	0.518	1998	0.86	0.508
2000	---	0.488	2000	0.954	0.471

Source: Jonathan N. Katz, "Report on Texas Congressional Redistricting: Minority Opportunities and Partisan Fairness," submitted in *Del Rio v. Perry,* 2001.

TABLE 14

ECOLOGICAL INFERENCE (Ei) ESTIMATES FOR MINORITY GROUPS IN CONGRESSIONAL DISTRICT 24, 1996 - 2000

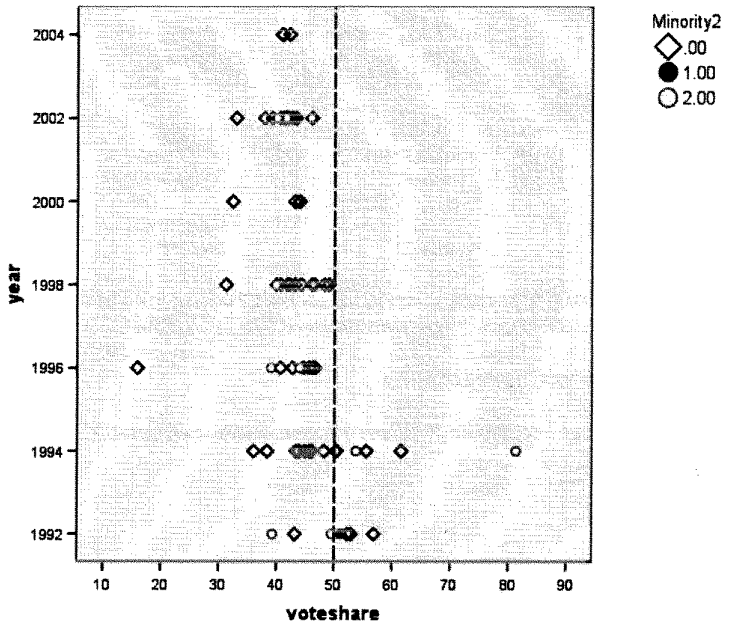
	Proportion Black	Proportion Anglo	Proportion Hispanic
CD24			
1996	0.919	0.453	0.995
1998	0.773	0.466	0.989
2000	0.795	0.521	0.843
			30.7%
	20.50%*		(14.3%)**

Source: Jonathan N. Katz, "Report on Texas Congressional Redistricting: Minority Opportunities and Partisan Fairness," submitted in *Del Rio v. Perry,* 2001.

* % African-American voting age population.

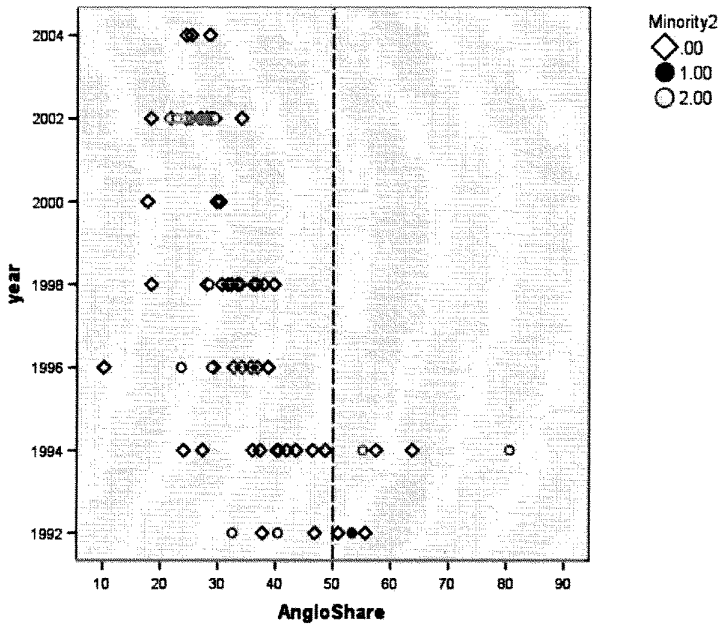
** % Hispanic voting age population (% Spanish surname voter registration)

FIGURE 1: DEMOCRATIC STATEWIDE VOTE SHARES SINCE 1992, TOTAL VOTE, WITH RACE / ETHNICITY OF CANDIDATE



Note: From data provided by the Texas State Board of Elections or collected by the authors. Diamonds are Anglo candidates, black dots are African-American candidates, yellow dots are Hispanic candidates.

FIGURE 2: ESTIMATED DEMOCRATIC STATEWIDE SHARES OF THE ANGLO VOTE SINCE 1992, WITH RACE / ETHNICITY OF CANDIDATE



Note: From data provided by the Texas State Board of Elections and estimates of whit support performed by the authors (see also Table 14). Diamonds are Anglo candidates, black dots are African-American candidates, yellow dots are Hispanic candidates.

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EXECUTIVE SUMMARY OF THE BULLOCK-GADDIE REPORT ON VIRGINIA

By Edward Blum and Abigail Thernstrom

Virginia has made enormous progress in minority voting rights. From a period of massive resistance a half-century ago, Virginia elected the only African-American governor and the first African-American lieutenant-governor. The state mightily resisted the initial implementation of voting rights, fighting to retain its poll tax in the 1960s. The state had also used a literacy test with an understanding clause, and, seven decades ago, a white primary.

In 1964, Virginia had the highest level of black registration for states entirely covered by the Voting Rights Act, but the act's provisions still increased black registration almost 18 points to 55.6 percent of the voting age population by 1967. Since then, Virginia's white population reports being registered at higher rates than do African Americans, but unlike for most other southern states, more recent years also reveal some fairly large differences with much higher percentages of white than black Virginians reporting being registered.

In several other southern states, black registration rates exceeded those for African Americans living in other parts of the country. That pattern occurs with less frequency in Virginia. Virginia blacks usually turnout at substantially lower rates than whites, but Old Dominion blacks occasionally approximate or even exceed African-American turnout in the rest of the nation. With the exception of 1994, Virginia whites also vote at lower rates than whites outside the South, especially in midterm elections.

In the late 1960s, Virginia had just 30 black elected officials, a number which progressed to more than 100 black officials by the mid-1980s and by 1997 the number increased to 333 (almost half of these serving on newly-elected school boards). The number of black school board members reported was halved within two years and the total number of black officials falls to 250 blacks in 2004. The state has elected one African-American to Congress in contemporary times – Robert Scott. The first black state senator, Douglas Wilder won election in 1969, and would subsequently be elected lieutenant governor and then governor. The legislature is about 12% African-American. The black proportion of the Senate is slightly larger than in the House of Delegates, but both are somewhat less than the black percentage among voting age Virginians. However, black candidates in the southeastern part of the state often defeat white opponents to win seats in the Assembly and Senate and not infrequently win a majority of the white vote.

Since the 1980s, both black and white Democratic candidates for statewide constitutional office have failed to command a majority of the white vote. Of the fifteen statewide contests held between 1985 and 2001, Democrats have won nine, including two of three races featuring African-American candidates. While the white vote is now solidly Republican, Democrats still manage to win about half the statewide contests by relying on a coalition that combines overwhelming African-American support with a sizable minority of the white vote.

Electoral patterns suggest that African-American and white Democratic congressional candidates perform similarly after controlling for incumbency status. Non-incumbent Democrats, regardless of race, typically attract little white support. On the other hand, incumbent Democrats – both black and white – can usually get the bulk of the white vote. African-American Member of Congress Robert Scott succeeded in attracting approximately half the white vote when seeking the open Third District and continues to run well with white voters, even winning without opposition in two of the three most recent elections.

An Assessment of Voting Rights Progress in Virginia

Prepared for the Project on Fair Representation
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Virginia's capitol also doubled as the capitol for the Confederacy. Many of the Civil War battles were fought on her soil and the symbolic end to the insurrection came at Appomattox Court House when General Lee surrendered to General Grant. Harry Byrd, the leader of Virginia's ruling faction and long-time senator designed the strategy of massive resistance used by the South to delay efforts at school desegregation. In light of the state's prominent role in opposing the extension of civil rights, it is nothing short of remarkable that the first southern state to have an African American lieutenant governor and the nation's only state to ever elect an African-American to be its governor is Virginia.

Virginia adopted a poll tax early in the 20th century and continued its usage until it was invalidated by constitutional amendment and litigation in the mid-1960s. Other disfranchising techniques adopted by Virginia included the literacy test with an understanding clause. For 18 years, the state also had a white primary but after a federal court invalidated the practice in 1930, Virginia, unlike Texas, did not make alterations and seek to reinstate it.[1]

Black Turnout and Registration

At the time of the 1964 presidential election, approximately 38.3 percent of Virginia's voting age African Americans had registered to vote. This was the highest level of black registration for any states that were entirely covered by the initial version of the Voting Rights Act.[2] By the fall of 1967, estimates placed the black registration at 55.6 percent of the voting age population.

After each election, the U.S. Bureau of the Census conducts an extensive nationwide survey that it uses to estimate registration and turnout rates. These surveys rely upon self-reports from individuals as to whether they had registered in time for the previous general election and whether they then cast ballots in those elections. Self-reported data often have inflated estimates of political participation but in most states, these are the most reliable figures on participation rates. While the estimates may be inflated, they can be used for comparative purposes both across time and across regions.

As Table 1 reports, except for 1986, Virginia's white population reports being registered at higher rates than do African Americans. This is a greater consistency of higher white than black registration than is found in most southern states covered by Section 5. As is often found for southern states, the greatest disparity occurs in 1980 where 65.4 percent of white but only 49.7 percent of African American voting-age adults report being

[1] Thomas R. Morris and Neil Bradley, "Virginia" in *Quiet Revolution in the South*, edited by Chandler Davidson and Bernard Grofman (Princeton: Princeton University Press, 1994), p. 298.
[2] U.S. Commission on Civil Rights, *Political Participation* (Washington, DC: U.S. Government Printing Office, 1968), pp. 222-223.

registered. By 1982, the difference had been reduced to just over seven percentage points and in 1984, only 1.6 percentage points. Then in 1986 the self-reported registration among African Americans is three points greater than for whites.

(Table 1 goes here)

Unlike for most other southern states, more recent years also reveal some fairly large differences with much higher percentages of white than black Virginians reporting being registered. In the four most recent elections, the rate at which whites registered exceeds blacks by roughly ten percentage points or even more. The greatest gap in recent years opens up in 2002 when only 47.5 percent of African Americans versus 64.1 percent of the whites had registered to vote. Even the 2004 election that often saw black registration equal or exceed white registration, did little to narrow the gap in Virginia with 57.4 percent of the black and 68.2 percent of the white adults reporting having been registered.

In several other southern states, black registration rates exceeded those for African Americans living in other parts of the country. That pattern occurs with less frequency in Virginia where it appears in 1986, 1992 and 1996. Non-southern blacks registered at slightly higher rates than Virginians in 1988 and 1990. However in the most recent mid-term election, blacks outside the South reported registering at a rate approximately ten percentage points greater than blacks in Virginia.

As with the pattern for in-state registration, Table 2 shows whites voting at higher rates than blacks. In only 1986 did a higher proportion of blacks than whites say they had voted. White turnout exceeded black turnout by relatively small margins in 1982 and 1984. More often election years saw relatively large differences as white turnout increased far more rapidly than did black turnout. Thus, in 1980, the difference between the two races exceeded 15 percentage points; in 1988 the difference was greater than 13 percentage points, and in the most recent presidential election, 63.0 percent of the whites compared with just under half of the African Americans went to the polls. Since Virginia does not elect its state legislators and constitutional officers in even numbered years, off-year participation rates are frequently low. For each of the two most recent mid-term elections, fewer than 40 percent of either black or white voters went to the polls. In 1998 and 2002, only about a quarter of Virginia's black adults bothered to vote.

(Table 2 goes here)

Virginia blacks usually turnout at substantially lower rates than whites, but Old Dominion blacks occasionally approximate or even exceed African-American turnout in the rest of the nation. In both presidential elections of the 1990s, more Virginia than non-South African Americans voted. In 2000, the turnout rate was almost identical for the two groups although slightly higher outside of the South.

In 1980, approximately ten percentage points more of the non-southern than Virginia blacks turned out. That is the greatest disparity for a presidential year. In the two most recent mid-term elections, non-southern African Americans turned out at rates at least ten

percentage points more than did Virginia blacks. The difference was especially great in 1998 when 40.4 of the African Americans outside the South but only 23.8 of those in Virginia picked up a ballot.

With the exception of 1994, Virginia whites also vote at lower rates than whites outside the South. One factor that helps account for the greater disparities in Virginia and non-South participation rates for both races in mid-term elections is the scheduling of state contests in the Old Dominion. Virginia elects its three statewide elected officials and state legislators in odd numbered years with the most recent elections occurring in 2005. Thus unlike most states, Virginia does not provide the stimulus of hotly contested elections for the governor or state legislators to induce voters to come to the polls in years when the ballot is not topped by a contest for the presidency.

Political science research suggests that lingering disparities in participation rates among ethnic groups may be due more to differences in socioeconomic characteristics than in obstacles to registration. The literature on American political participation consistently finds that socioeconomic status (SES) is the determinant of political involvement. The classic *Who Votes?*,[3] Leighley and Nagler's[4] reexamination of the *Who Votes?* analysis, and the work of Verba and his colleagues[5] consistently find this effect across ethnic and racial groups. Additional research finds that, once one controls for SES, black "overparticipation" is found [6]. However, Abramson and Claggett[7] observed that African-American voter participation still lagged white participation, even when controls for socio-demographic influences -- especially education – were introduced, while Uhlaner, *et al.* find that Anglo whites and African-Americans have similar rates of political participation, and that it is Latino participation that lags due to education and citizenship

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[3] Raymond Wolfinger, and Steven Rosenstone. 1980. *Who Votes?* New Haven: Yale University Press.

[4]Jan E. Leighley and Jonathan Nagler. 1992. Class Bias in Turnout: The Voters Remain the Same. *American Political Science Review* 86: 725-736; Jan E. Leighley and Jonathan Nagler. 1992. Individual and Systemic Influences on Turnout: *Who Votes?* 1984. *Journal of Politics* 54: 718-740.

[5] Sidney Verba and Norman Nie, 1972. *Participation in America: Political Democracy and Social Equality.* New York: Harper, Row; Sidney Verba, Kay Lehman Schlozman, and Henry Brady, 1995. *Voice and Equality Civic Volunteerism in American Politics.* Cambridge: Harvard University Press.

[6] See, for example, Thomas M. Guterbock, and Bruce London. 1983. Race, Political Organization, and Participation: An Empirical Test of Four Competing Theories. *American Sociological Review* 48: 439-453; Marvin E. Olsen, 1970. Social and Political Participation of Blacks. *American Sociological Review.* 35: 682-697; Verba and Nie, 1972.

[7] Paul R. Abramson, and William Claggett, 1984. Race-related Differences in Self-Reported and Validated Turnout. *Journal of Politics*, 46: 719-739.

factors.[8] Leighley and Vedlitz find that cultural theories are largely invalid when it comes to explaining differences in participation beyond SES effects.[9]

African-American Office holding

When record keeping on the numbers of African Americans in public office began in the late 1960s, Virginia had only 30. Of these two-thirds served in municipal offices with only two holding county positions. The growth in the number of black officials in the Old Dominion comes more slowly than in other southern states. Not until the mid-1980s does Virginia have more than 100 black officials. In that year, just over half held municipal office while approximately a third served at the county level.

As a review of Table 3 demonstrates a major reason for the smaller numbers of black elected officials in Virginia than elsewhere in the South stems from the state's tradition of having appointed school boards. Not until 1997 are school board members elected in Virginia. Up until that time, Virginia has fewer black elected officials than any other southern state. With the election of school board members, the number of black elected officials reported by the Joint Center for Political and Economic Studies doubles to 333 with almost exactly half of these serving on school boards. However, two years later, the number of school board members reported by the Joint Center is halved and the total number of black officials falls by 82. The numbers drop again slightly in 2001 so that in the most recent enumeration, thus fewer 250 blacks hold office in Virginia.

(Table 3 goes here)

African American in Congress

Under the impetus of Section 2 of the Voting Rights Act, Virginia created a majority-black district in 1991. This new district sprawled throughout much of the Tidewater, running from the mouth of the James River up to Richmond and over to Petersburg while including some rural counties north of the river. It had a 64 percent black population. In 1992 the new Third District sent to Congress the second African American to serve in the state Senate, Robert Scott. Scott won a commanding two-thirds of the vote in the Democratic primary and romped to victory with almost 80 percent of the vote in the general election. Scott, unlike some of the other African Americans newly elected to Congress in 1992, ran well among both white and black voters.

The third district was one of those successfully challenged in the wake of *Shaw v. Reno.*[10] The new, somewhat more compact district still extended along the James River from the

[8] Carole J. Uhlaner, Bruce E. Cain, and D. Roderick Kiewiet, 1989. Political Participation of Ethnic Minorities in the 1980s. *Political Behavior* 11: 195-231.
[9] Jan E. Leighley and Arnold Vedlitz, 1999. Race, Ethnicity, and Political Participation: Competing Models and Contrasting Explanations. *Journal of Politics* 61: 1092-1114.
[10] *Shaw v. Reno*, 509 U.S. 630 (1993). The Virginia challenge came in *Moon v. Meadows.*

Chesapeake Bay to Richmond but its black percentage was reduced by ten points. Nonetheless, Scott continued to win more than three-fourths of the vote.

The 2000 census showed Scott's district to be almost 13 percent below the ideal district population for a Virginia congressional district. Scott felt so safe in his seat that at the time of the 2001 redistricting, he urged the legislature to reduce the minority concentration in his district and to increase it in the neighboring, Southside Fourth District. The legislature ignored Scott's generosity and maintained the black percentage in the third district at 56 percent black -- the same black concentration that the 2000 census had shown to be present.

The incumbent's neighborly generosity was, no doubt, at least in part motivated by the near miss of an African-American candidate in a special election held in the Fourth District in 2001 to succeed the departed Norman Sisisky (D-Petersburg). In that election, in a district that was an estimated 39 percent African American when redrawn for the 1998 elections, black Democrat state Senator Louise Lucas narrowly lost to white Republican state Senator Randy Forbes, by a 52-48 margin or 5,800 ballots. African Americans believed that if the black percentage could be boosted just ever so slightly in the Forth District, then an African American would have a good chance of winning.

The turnout rate had been 29.7% of the voting age populations for blacks, while the white voter turnout was estimated at 30.1% of white VAP. The claim that a general election contest might heighten the prospect of electing a minority candidate of choice is dashed by an evaluation of the November 2001 statewide elections. When the turnout data for the state constitutional offices are reconstituted inside the boundaries of Congressional District 4, the estimated rate of black voter turnout is 28.9% of black VAP. This is dwarfed by a 43.0% white VAP turnout rate within the district for the same election.

The 2001 special election contest was highly polarized by race. Only 9.7 percent of whites voted for the black Democratic candidate, while nearly all the black vote went for Democrat Lucas. In three major statewide races reconstituted within the boundaries of District 4 in 2001, the Democratic share of the white vote ranged from an estimated 15.1% for black Democratic Attorney General candidate and Assembly Delegate [11]Don McEachin to 32.3 percent for the successful Democratic gubernatorial candidate, white suburbanite Mark Warner.[12]

[11] Warner had been considered a rising star in the Virginia Democratic Party for over a decade. Initially his name surfaced as a possible candidate for Democrat Jim Moran's northern Virginia congressional seat, and then in 1996 he unsuccessfully challenged incumbent US Senator John Warner. See Thomas A. Kazee, ed. 1994. *Who Runs for Congress?* Washington, DC: CQ Press.

[12] McEachin, a longtime Douglas Wilder ally from Henrico County an incumbent defeated incumbent Del. Floyd H. Miles in the June 2005 Democratic Primary.

African Americans in the Legislature

African Americans have served in the Virginia lower chamber since 1967 when two blacks won elections. For the next decade, black membership was never more than two and only reached four in 1979. The growth in black representation in the lower chamber has come slowly as Table 4 reveals. This pattern is unlike in most other southern states where new districting plans frequently produced a substantial increase in African American legislative presence. In the Virginia House of Delegates, the increase since 1979 has been consistent but gradual. Early in the new century blacks held eleven of the 100 seats in the lower chamber. This is substantially lower than the almost 20 percent of the state's voting age population that is African American.

(Table 4 goes here)

As indicated in Figure 1, Virginia ranks at the bottom of the nine Section 5 southern states in terms of black proportional representation in the state legislature relative to the black proportion of the citizen voting age population. Only two southern Section 5 states exceed proportionality – Florida and Alabama – but four states approach or exceed 80 percent of proportionality, and every other state except Virginia exceeds two-thirds of proportionality. While Virginia ranks below all the other Southern states in terms of black proportionality in the state legislature, the state ranks ahead of border South states such as Kentucky and Oklahoma, but behind non-Section 5 states Tennessee (proportionality score = .81) and Arkansas (proportionality score = .75). Figure 2 shows Virginia and Louisiana tied at the bottom in terms of black congressional proportionality.

(Figures 1 and 2 go here)

The first black state senator, Douglas Wilder won election in 1969. He continued his service in the Senate until 1985 when he won election as lieutenant governor. During most of his tenure he was the only African American senator (see Table 4). The pattern for change in black membership in the Senate is much like that in the House of Delegates. That is, the growth has been gradual beginning in 1983 and is not tied to changes in district lines. By the early part of the 21st century, African Americans held five of forty seats in the Senate. While their proportion of the Senate is slightly larger than their percentage in the House of Delegates, it is substantially less than the black percentage among voting age Virginians.

African Americans in Statewide Office

Virginia elects fewer statewide officials than any other southern state save for Tennessee. In the Old Dominion only the governor, lieutenant governor and attorney general run statewide.

As previously noted, in 1985, Douglas Wilder won election as lieutenant governor. He thus became the first African American to hold this position in the South. Since fewer

than one in five registered voters in Virginia is black, Wilder's victory relied upon substantial support from white Democrats. Ecological regression analyses and ecological inference analysis indicate that Wilder received between 41 and 47 percent of the white vote in 1985.

Virginia is now the last state in the union to restrict its governor to a single term. Virginia's lieutenant governor is typically a serious candidate for the top position after the governor does his single term. And so it was with Wilder. Virginia makes far less use of primaries than other southern states so Wilder did not have to secure the nomination in a primary but rather was chosen at a state convention. Wilder ran well in pre-election polls and seemed to be assured of a comfortable victory in the exit polls. However, when the votes were actually counted, his victory margin was a razor thin less than 6800 out of almost 2 million votes cast, prompting a recount. While Wilder attracted a share of the white vote, many whites who voted for his Republican opponent, Marshall Coleman, hesitated to acknowledge to pollsters that they were not going to support the black candidate.

Exit polls conducted by CBS News and presented in Table 5 show Wilder getting 92 percent of the black vote and 44 percent of the white vote, which would translate into a 53-47 victory, with a margin of error at 95% confidence of +/- 2.9 points, assuming African Americans constituted 18 percent of the voters who turned out. Wilder's victory fell just outside this range, while Beyer's candidacy for lieutenant-governor ran just four points better among whites and 12 points worse among African-Americans in the exit poll, while Mary Sue Terry ran nine points better among whites and 12 points worse among African Americans. Wilder's white vote share was lower than calculated from the exit poll sample since he did not win by six percentage points.

(Table 5 goes here)

While Wilder's victory was far smaller than had been anticipated, it was a victory and in that sense, is a more impressive display of biracial politics than in California where Los Angeles Mayor Tom Bradley twice lost gubernatorial bids (discussed in our report on California). In his second bid, Bradley managed only 37 percent of the vote against incumbent George Deukmejian.

Wilder's victory, narrow as it was, marked the last Democratic victory in a Virginia gubernatorial election for a dozen years. Republicans Georgia Allen and James Gilmore, III, won the governorship in 1993 and 1997. Thus Wilder did better at appealing to a wide range of Virginia voters than either of the two white Democrats who sought to succeed him.

The rising tide of Republicanism crested in 1993 and 1997 when the GOP won all three statewide offices, and subsequently took control of the legislature. Exit polling data from Edison Media Research for the 1997 Virginia gubernatorial election demonstrate a powerful racial dimension to the partisan preferences of gubernatorial voters. Jim Gilmore, the prevailing Republican, pulled an estimated 61 percent of the white vote,

compared to just 14 percent of the black vote. Gilmore's Democratic opponent attracted less of the white vote, according to exit polls, than did Wilder. The contests for attorney general and lieutenant governor saw voting patterns similar to the Gilmore – Breyer gubernatorial election as over 80 percent of the electorate reported straight-ticket voting for the three major offices.[13]

Republicans held these posts until 2001, when Democrats recaptured two of the three statewide constitutional offices of the Commonwealth. Democrats regained momentum behind the candidacy of the narrow loser of the 1996 US Senate general election. Mark Warner, a northern Virginia entrepreneur, won the governorship with a comfortable five–point margin, while Tim Kaine carried the lieutenant governor's slot by a two-point margin. The Democratic nominee for attorney general lost by 21 percentage points, a 26-point swing from the prevailing white ticket-topper to the losing African-American candidate down-ticket.

Racial Voting Patterns

While Doug Wilder failed to command the support of most white voters in his gubernatorial bid, Bobby Scott, the first African American to represent a portion of Virginia in Congress in approximately a century, ran impressively among white voters.

The bulk of Table 6 deals with Democratic congressional candidacies in the Tidewater from 1986 though 1994. Most of the estimates presented here come from a report prepared by Ronald Weber as part of the *Moon v. Meadows* suit challenging congressional District 3 as violative of the standards established in *Shaw v. Reno* and *Miller v. Johnson*. The estimates involving black Democratic candidates, except for Scott in 1986 and Lucas in 2001, come from the expert report prepared by Lisa Handley in that same *Moon v. Meadows* litigation.

Table 6 shows that non-incumbent Democrats tended to run poorly among white voters. For example, in the First District, held for many years by Republican Herb Bateman, no Democrat attracted as much as 40 percent of the white vote. Robert Scott's 1986 challenge to Bateman attracts less white support than did other Democrats according to the OLS estimates but is the median case in terms of the white support attracted from the homogenously white precincts. Prior to the redrawing of District 3 to give it a black majority, white Democrats ran very poorly with white voters. In the Seventh District in the early 1990s, the Democratic nominee attracted only about one-seventh of the white vote. In a similar fashion, when Owen Pickett ran for an open seat in the Second District in 1986, he got less than 30 percent of the white vote according to the OLS estimate, a performance in keeping with some First District Democrats.

(Table 6 goes here)

[13] http://www.cnn.com/ALLPOLITICS/1997/11/06/poll/#archive accessed October 1 2005.

Democratic incumbents generally did better and Pickett attracted half of the white vote in his first reelection bid. After district reconfiguration in the early 1990s, Pickett continued to get a majority of the white vote. In the Fourth District, incumbent Norman Sisisky received approximately half of the white vote in 1992 and 1994 and almost three-fourths of the white vote in his last contested election. In both the old and the new districts, Sisisky frequently had no Republican opposition. After his death, Louise Lucas, an African American, managed only approximately 10 percent of the white vote in the special election to fill the vacancy. Her performance is comparable to that of Bobby Scott in First District fifteen years early.

Against this background, Scott's ability to attract half of the white vote in the open Third District in 1992 is a remarkably strong showing for a Democrat. A different kind of research, perhaps involving field interviews would be necessary to determine why Scott does so much better in 1992 than he himself did six years earlier or than Lucas did nine years later.[14] Perhaps the quality of the campaign and the candidates or Scott's experience gained in the earlier congressional bid might account for his much stronger performance in 1992.

Table 7, excerpted from a previous analysis by Gaddie,[15] shows OLS and ecological inference estimates of support for Rep. Bobby Scott in his reelection bids through 2004.[16] Scott twice won reelection without opposition (2000 and 2002) and in 1996, 1998, and 2004, at least two estimates in each year show Scott commanding a majority of the white vote. The estimates of white support for Scott in 1992 and 1994 in Table 7 are several percentage points lower than in Table 6 and do not show Scott with a majority of the white vote in his initial election. A possible explanation for the inconsistency is different weightings being applied to the data by those making the estimates (The data analyzed in Table 7 are not weighted).

(Table 7 goes here)

The bottom of Table 6 presents estimates of Douglas Wilder's performances in two statewide contests. These estimates from Lisa Handley's expert report show that when winning the office of lieutenant governor, Wilder attracted just over 40 percent of the white vote.[17] The 40 percent of the white vote in this open seat contest exceeds the figure

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[14] One important difference that contributes to Scott's stronger showing in 1992 than 1986 is that in the earlier contest he faced a well-entrenched, well-funded incumbent while in 1992 the district had no incumbent.

[15] Ronald Keith Gaddie. 2003. "An Evaluation of Racial Polarization and the Election of Minority Legislative Candidates of Choice in the Vicinity of Virginia Congressional Districts 3 and 4." Prepared for *Hall v. Commonwealth,* June 2003.

[16] Gary King. 1997. *A Solution to the Ecological Inference Problem.*. Princeton, NJ: Princeton University Press. King's technique can be used with measures of the racial makeup to estimate voter participation and candidate preferences by race when using aggregated units, such as precincts or counties.

[17] Lisa R. Handley, "Liability Issues in *Moon v. Meadows"* (September 4, 1996).

managed by Picket in 1986 although it fails to match Scott's 1992 showing in the Third District. Four years later, Handley estimates that Wilder won approximately a third of the white vote on his way to becoming governor, a performance similar to Pickett's in his initial congressional bid and substantially greater than Louise Lucas' showing in the Fourth District special election. According to Handley, as a gubernatorial candidate, Wilder received a share of the white votes similar to that often obtained by Democratic challenges but substantially less than usually won by Democratic incumbents.

Ecological inference analysis and OLS estimates of county-level data presented in Table 8 indicate that Wilder's share of the white vote in the gubernatorial bid was down by five to six points when compared to his earlier run for lieutenant governor. These estimates indicate that Wilder's 1989 performance among whites was roughly comparable to subsequent Democratic candidates for statewide office. The estimates based on county-level data for lieutenant governor in Table 8 are quite similar to the Handley estimates based on precinct-level data in Table 6. For the gubernatorial election, the county-level analysis shows Wilder attracting far more of the white vote than do the precinct-level estimates. The county-based estimates are in line with the exit poll results in Table 5 and therefore overestimate Wilder's support among whites but may be closer to the actual vote share than the 28 – 35 percent reported by Handley .

(Table 8 goes here)

Democrats rebounded in 2001, reclaiming two of three statewide offices behind Mark Warner and Tim Kaine. However, the failing statewide candidate, African-American Don McEachin, ran less well with white voters. Analyses of white voter preferences in the Tidewater region show McEachin running sixteen points behind the successful Democratic candidates for governor and lieutenant governor. Exit polling showed a similar disparity.[18] However, to attribute all of the difference to race is to load on a single-factor explanation that is not reflected in the public record. McEachin survived a difficult (and rare) statewide primary of four candidates and was more closely associated with liberal positions on gun control and crime.

> As McEachin, a personal-injury lawyer who is the first black to run for the Virginia office on a major party ticket has been hampered by a bruising primary in June to win the nomination. No sooner had he won the four-way race, which drained his campaign war chest, than the party's gubernatorial candidate, Mark R. Warner, disassociated from his positions on capital punishment and gun safety. "He hasn't had a lot of support from the top of the ticket, and he utilized resources in the primary that he has not been able to replenish," Holsworth said. "His

[18] Joel Turner, 2001. "Democrat Tim Kaine Wins Lieutenant-Governor; Analysts Say Mark Warner's Gubernatorial Victory Boosted Kaine's Position." *The Roanoke Times*, November 7: A-16.

> campaign has struggled. If he wins, he'll win on the coattails of the guy at the top. The sense is that if Earley is close, then Kilgore wins. [19]

Hardy also notes that McEachin was outspent by almost one-third, a disparity probably not fully reflective of the costly primary he survived.

Evidence from State Legislative Elections

In a 2003 report, Gaddie examined elections involving African-American candidates in legislative districts in the parts of Virginia usually included in Congressional Districts 3 and 4.[20] He used two accepted techniques for analyzing voter preferences: ecological regression and ecological inference (Ei) analyses. Estimates of black voter and non-black voter preferences for each contest appear in Table 9.

(Table 9 goes here)

Of the 33 legislative general election contests examined in Table 9, in fewer than half (14) did both the Ei and OLS estimates show pluralities of whites and blacks choosing different candidates.[21] In ten contests, both estimating techniques show pluralities of black and white voters agreeing on the same candidates with all but House district 74 in 2001 actually reporting majorities of both races rallying to the same candidate. In the other nine contests, the ecological regression estimates and the ecological inference estimates disagree as to whether pluralities of whites and blacks opposed one another. Those districts are: in 1993, House districts 61, 93, 95; in 1995, Senate district 5 and House districts 62 and 69; in 1997, House district 74; in 1999, Senate district 2; in 2001, House district 92. The black candidate of choice prevailed in all nine of those cases.

The discrepancies between Ei and ecological regression occur when the non-black vote is closely divided. The critical .500 vote share value is typically within the predictive errors of the point estimates for Ei and ecological regression in these cases. Gaddie notes that,

> If we considered all of the mixed cases to be racially polarized, it would mean that polarized voting is occurring roughly two-thirds of the time in black-white legislative contests in this part of Virginia feature racially polarized voting. However, black candidates of choice won about 85% of all legislative contests examined, and won both polarized and other contests with similar frequency.[22]

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[19] Michael Hardy, 2001. Candidates Playing to Perceptions. *Richmond Times-Dispatch* November 4: C-4

[20] Gaddie, *op. cit.*

[21] In all of the 14 except for Senate district 16 in 1991, a majority of blacks opposed a majority of whites.

[22] Gaddie, *op. cit*, page 3.

So while blacks and whites often voted in opposition, the result did not rise to the level of legally significant, racially-polarized bloc voting. Black candidates and black candidates of choice won far more often than they lost. Black candidates who were candidates of choice won in 30 of 33 instances.

Table 9 also includes estimates of racial voting preferences for six primaries in the area of Virginia that has been included in congressional districts 3 and 4. These contests are equally divided among the three categories with both estimating techniques showing the bulk of black and white voters supporting the black candidate in House district 89 in 1995 and district 74 in1997. The two estimating techniques show opposing black and white preferences in House districts 75 and 77 in 1993. In the district 77 contest, the analysis indicates that most African-American voters narrowly supported the white candidate while white voters gave strong support to the black candidate.

Black candidates are winning, but those victories are not equally large. Support for black candidate of choice varies, specifically among white voters, and this variation related to the type of candidate confronted (see Table 10). Table 10 divides contests by candidate of choice and type of opponent – white independent, white Republican, black Republican – and averages the support overall and by racial group for each type of contest. Estimated black vote share for black candidates of choice is high across the board, but highest for those candidates who confront white, independent opponents, and lowest among those who confront Republicans. Black support for candidates of choice is lowest, on average, when the opponent is a black Republican.

Most of the vote shift, however, is among white voters. When black candidates of choice confront white independents, they garner, on average, majority white voter support; however, when confronting Republicans, especially white Republicans, the black candidates of choice run an average of 14 to 21 percentage points lower. Black-versus-white contests result in stark black-versus-white choices when Republicans run rather than when the opponent is an Independent, which indicates a strong partisan component to the vote choice in these biracial contests, or as Gaddie observed "[t]his result indicates that polarization, by being more pronounced in the more-partisan context, reflects a function of party."[23]

(Table 10 goes here)

Conclusion

Virginia has progressed in the registration of black voters. However black turnout still lags white participation levels in the Commonwealth and sometimes lags black voter turnout in the rest of the country. The proportion of African-American legislators compares less favorably with the black proportion in Virginia's adult population than is found in similar comparisons in other southern states subject to Section 5. However,

[23] Gaddie, *op. cit.*, page 4.

black candidates in the southeastern part of the state often defeat white opponents to win seats in the Assembly and Senate and not infrequently win a majority of the white vote.

Since the 1980s, both black and white Democratic candidates for statewide constitutional office have failed to command a majority of the white vote. Of the fifteen statewide contests held between 1985 and 2001, Democrats have won nine, including two of three races featuring African-American candidates. Of the nine contests for which estimates of racial preferences appear in Table 8, the Democrat carried the bulk of the white vote in no more than one election. While the white vote is now solidly Republican, Democrats still manage to win about half the statewide contests by relying on a coalition that combines overwhelming African-American support with a sizable minority of the white vote. That coalition accomplished what no other state has achieved: the election of a black chief executive.

Electoral patterns suggest that African-American and white Democratic congressional candidates perform similarly after controlling for incumbency status. Non-incumbent Democrats, regardless of race, typically attract little white support. On the other hand, incumbent Democrats – both black and white – can usually get the bulk of the white vote. African-American Member of Congress Robert Scott succeeded in attracting approximately half the white vote when seeking the open Third District and continues to run well with white voters, even winning without opposition in two of the three most recent elections.

TABLE 1

REPORTED REGISTRATION BY RACE IN VIRGINIA AND OUTSIDE THE SOUTH, 1980-2004

	1980	1982	1984	1986	1988	1990	1992	1994	1996	1998	2000	2002	2004
VIRGINIA													
Black	49.7	53.6	62.1	66.5	63.8	58.1	64.5	51.1	64	53.6	58	47.5	57.4
White	65.4	60.8	63.7	63.3	68.5	61.9	67.2	63.6	68.4	63.5	67.6	64.1	68.2
Non-South													
Black	60.6	61.7	67.2	63.1	65.9	58.4	63	58.3	62	58.5	61.7	57	na
White	69.3	66.7	70.5	66.2	68.5	64.4	70.9	65.6	68.1	63.9	65.9	63	na

Source: Various post-election reports by the U.S. Bureau of the Census.

3091

TABLE 2

REPORTED TURNOUT BY RACE IN VIRGINIA AD OUTSIDE THE SOUTH, 1980-2004

	1980	1982	1984	1986	1988	1990	1992	1994	1996	1998	2000	2002	2004
VIRGINIA													
Black	42.9	44.3	55	42.5	47.7	32	59	33.8	53.3	23.8	52.7	27.2	49.6
White	58.3	46.2	57.8	36.8	61.1	39.6	63.4	50.4	58.5	32.4	60.4	37.8	63
Non-South													
Black	52.8	48.5	58.9	44.2	55.6	38.4	53.8	40.2	51.4	40.4	53.1	39.3	NA
White	62.4	53.1	63	48.7	60.4	48.2	64.9	49.3	57.4	44.7	57.5	44.7	NA

Source: Various post-election reports by the U.S. Bureau of the Census.

TABLE 3

NUMBER OF AFRICAN-AMERICAN ELECTED OFFICIALS
IN VIRGINIA, 1969-2001

Year	Total	County	Municipal	School Board
1969	30	2	20	*
1970	36	4	22	*
1971	52	5	34	*
1972	54	15	32	*
1973	62	18	35	*
1974	63	17	17	*
1975	64	17	42	*
1976	80	25	49	*
1977	82	25	52	*
1980	91	30	52	*
1981	91	31	52	*
1984	107	37	56	*
1985	116	36	66	*
1987	123	35	68	*
1989	144	39	76	*
1991	152	44	84	*
1993	155	47	74	*
1995	*No data collected by the Joint Center for 1995*			
1997	333	48	89	164
1999	251	50	87	82
2001	246	51	79	85

*School board members were not elected prior to 1997.
Source: Various volumes of *The National Roster of Black Elected Officials* (Washington, D.C.: Joint Center for Political and Economic Studies).

TABLE 4

RACIAL MAKEUP OF THE VIRGINIA LEGISLATURE, 1965 – 2005

Year	VA Senate	VA House	% Black in Senate	% Black in House
1965	0	0	0	0
1967	0	2	0	2
1969	1	2	2.5	2
1971	1	2	2.5	2
1973	1	1	2.5	1
1975	1	1	2.5	1
1977	1	1	2.5	1
1979	1	4	2.5	4
1981	1	4	2.5	4
1983	2	4	5	4
1985	2	5	5	5
1987	2	7	5	7
1989	3	7	7.5	7
1991	3	7	7.5	7
1993	4	7	10	7
1995	5	8	12.5	8
1997	5	9	12.5	9
1999	5	10	12.5	10
2001	5	10	12.5	10
2003	5	11	12.5	11
2005	5	11	12.5	11

TABLE 5

1989 CBS NEWS EXIT POLL FOR VIRGINIA STATEWIDE ELECTIONS

Candidate Party	Governor		Lt-Governor		Attorney General	
	%BL	*%WH*	*%BL*	*%WH*	*%BL*	*%WH*
Democrat	92.0	43.8	80.0	48.0	81.1	52.6
Republican	8.0	52.2	12.7	48.0	7.5	42.4

Source: CBS News/The New York Times. 1991. *CBS NEWS/NEW YORK TIMES VIRGINIA GUBERNATORIAL ELECTION EXIT POLL.* ICPSR Study number 9494, released May 1991. Ann Arbor, MI: Interuniversity Consortium for Political and Social Research.

TABLE 6

WHITE SUPPORT FOR DEMOCRATIC CANDIDATES IN SELECTED VIRGINIA ELECTIONS

Year	Democratic Nominee	Race of Democrat	Estimates of White Support OLS	HP
Congressional Elections				
District 1				
1986	Scott	B	9.2	23.3
1988	Ellenson	W	11.5	16.8
1990	Fox	W	34.0	39.1
1992	Fox	W	31.5	32.2
1994	Sinclair	W	18.1	19.5
District 2				
1986	Pickett	W	29.0	40.7
1988	Pickett	W	50.5	54.5
1990	Pickett	W	73.1	77.3
1992	Pickett	W	51.7	53.3
1994	Pickett	W	54.4	56.2
District 3				
1986	Powell	W	17.0	20.0
1988	No Democratic nominee			
1990	Starke	W	27.0	27.8
1992	Scott	B	50.7	60.1
1994	Scott	B	46.5	52.7
District 4				
1986	Sisisky	W	No Republican nominee	
1988	Sisisky	W	No Republican nominee	
1990	Sisisky	W	68.7	71.3
1992	Sisisky	W	57.6	57.5
1994	Sisisky	W	49.1	50.5
1996	Sisisky	W	74.0	72.8
1998	Sisisky	W	No Republican nominee	
2000	Sisisky	W	No Republican nominee	
2001*	Lucas	B	9.7	

District 7				
1992	Berg	W	14.9	15.8
1994	Berg	W	14.2	14.8
Statewide				
1985, Lt. Governor				
	Wilder	B	40.8	45.0
1989, Governor				
	Wilder	B	28.0	35.2

OLS = ordinary least squares regression; HP = homogeneous precincts; B = Black; W = White

* The 2001 special election was necessitated by Norman Sisisky's death. The estimate of white voting preferences were made using Gary King's ecological inference program.

Sources: Lisa R. Handley, "Liability Issues in *Moon v. Meadows* (September 4, 1996); Ronald E. Weber, "Final Report on Liability Issues for Hearing in *Moon v. Meadows* (August 2, 1996); and Ronald Keith Gaddie, "An Evaluation of Voter Participation and Vote Choice in Virginia's 4th Congressional District," prepared for *Hall v. Commonwealth*(June 1 2002).

TABLE 7

ESTIMATES OF RACIAL SUPPORT FOR CANDIDATES IN VIRGINIA CONGRESSIONAL DISTRICT 3, 1992-2004

CONGRESSIONAL RACES

US House 3, 1992:	*Ecological Regression*		*Ecological Inference*	
	Black	Non-Black	Black	Non-Black
Scott (B)	.966	.469	.953	.481
Jenkins	.034	.531	.047	.519

US House 3, 1994:	*Ecological Regression*		*Ecological Inference*	
	Black	Non-Black	Black	Non-Black
Scott (B)	1.000	.403	.988	.440
Ward	<0	.597	.012	.560

US House 3, 1996:	*Ecological Regression*		*Ecological Inference*	
	Black	Non-Black	Black	Non-Black
Scott (B)	.986	.553	.979	.575
Holland	.014	.447	.021	.425

US House 3, 1998:	*Ecological Regression*		*Ecological Inference*	
	Black	Non-Black	Black	Non-Black
Scott (B)	1.000	.518	.986	.557
Barnett	<0	.482	.014	.443

Scott had no opponent in 2000 or 2002.

US House 3, 2004:	*Ecological Regression*		*Ecological Inference*		*Homogenous Precinct*	
	Black	Non-Black	Black	Non-Black	Black	Non-Black
Scott (B)	1.000	.484	.925	.515	.900	.523
Sears	<0	.516	.075	.485	.100	.477

Note: cell entries are estimated proportions of the vote for the candidates. Estimates from 1992 through 1998 are from Ronald Keith Gaddie. 2003. "An Evaluation of Racial Polarization and the Election of Minority Legislative Candidates of Choice in the Vicinity of Virginia Congressional Districts 3 and 4." Prepared for *Hall v. Commonwealth,* June 2003. The authors computed estimates from 2004.

TABLE 8

ESTIMATES OF WHITE SUPPORT FOR DEMOCRATS IN STATEWIDE CONSTITUTIONAL OFFICES IN VIRGINIA, 1985-2005

Year/Candidate	OLS	*Ei*
1985		
Governor (Baliles)	51.9	40.8
Lieutenant Governor (Wilder-B)	47.3	46.2
1989		
Governor (Wilder-B)	42.0	40.6
Lieutenant-Governor (Beyer)	46.5	41.3
1993		
Governor (Terry)	32.2	42.9
Lieutenant-Governor (Beyer)+	46.5	41.2
1997		
Governor (Beyer)	36.6	38.6
Lieutenant-Governor (Payne)	40.8	41.3
Attorney General (Dolan)	38.7	41.1

*African-American candidate.
+Incumbent Democrat.
++Incumbent Republican

Source: Computed by authors from data obtained from Virginia State Board of Elections and the Geospatial & Statistical Data Center at the University of Virginia.

TABLE 9

ESTIMATES OF SUPPORT FOR BLACK CANDIDATES IN TIDEWATER REGION STATE LEGISLATIVE ELECTIONS

	Ecological Regression		*Ecological Inference*	
	Black Vote	Non-Black Vote	Black Vote	Non-Black Vote
1991 GENERAL ELECTIONS				
State House District 70:				
Ealey (B)	1.000	.261	.923	.288
Perkins	<0	.739	.077	.712
State House District 77:				
Forehand (B)	.124	.995	.222	.895
Bazemore	.876	.005	.778	.105
State House District 89:				
Jones (B)	.995	.565	.939	.588
Boone	.005	.435	.061	.412
State House District 95:				
Crittenden (B)	.991	.509	.961	.555
Johnson	.009	.491	.039	.445
State Senate District 5:				
Miller (B)	1.00	.421	.992	.459
Clay	<0	.579	.008	.541
State Senate District 16:				
Marsh (B)	1.00	.222	.926	.330
Harrington	<0	.428	*	*
Holdin	<0	.350	*	*
State Senate District 18:				
Lucas (B)	.969	.080	.910	.142
Ruff	.031	.920	.090	.858
1993 GENERAL ELECTIONS				
State House District 61:				
Ruff	<0	.619	.306	.496
Parker	.350	.387	*	*
Green (B)	.650	<0	*	*
State House District 70:				
Jones (B)	1.00	.202	.933	.259
Suyes	<0	.777	*	*
Simpson	.012	.021	*	*
Turnout	.187	.353	.188	.350

*EI estimates are for leading candidate against all other candidates

	Ecological Regression		*Ecological Inference*	
	Black Vote	Non-Black Vote	Black Vote	Non-Black Vote
State House District 71:				
Cunningham (B)	.973	.806	.969	.816
Artabazo	.027	.194	.031	.184
State House District 77:				
Spruill (B)	.938	.562	.912	.545
Johnson	.062	.438	.088	.455
State House District 80:				
Melvin (B)	.829	.721	.819	.731
Holley	.171	.279	.181	.269
State House District 93:				
Hamilton	<0	.816	.012	.752
Sharpe (B)	<0	.184	.988	.248
State House District 95:				
Crittenden (B)	.984	.467	.976	.524
Voorhees	.016	.533	.024	.476
1995 GENERAL ELECTIONS				
State House District 62:				
Ingram	.430	.885	.518	.876
Brown (B)	.570	.115	.482	.124
State House District 69:				
Hall	.950	.489	.904	.597
Moore (B)	.050	.511	.096	.403
State House District 70:				
Jones (B)	.949	.284	.932	.323
Hall	.026	.693	*	*
Moore (B)	.024	.023	*	*
State House District 74:				
McEachin (B)	.917	.300	.830	.485
Prior	.083	.700	.170	.515
State House District 77:				
Spruill (B)	.999	.553	.960	.560
Johnson	.001	.447	.040	.440
State House District 80:				
Melvin (B)	1.000	.171	.934	.286
Andrews	<0	.829	.066	.714
State Senate District 5:				
Miller (B)	.697	.523	.994	.461
Wilcox	.303	.477	.006	.539

*EI estimates are for leading candidate against all other candidates

	Ecological Regression		*Ecological Inference*	
	Black Vote	Non-Black Vote	Black Vote	Non-Black Vote
State Senate District 18:				
Lucas (B)	.947	.097	.893	.201
Slayton	.053	.903	.107	.799
1997 GENERAL ELECTIONS				
State House District 71:				
Baskerville (B)	.942	.792	.931	.792
Artabazo	.058	.208	.069	.208
State House District 74:				
Meachin (B)	.981	.510	.992	.486
Phillips	.019	.490	.008	.514
1999 GENERAL ELECTIONS				
State House District 90:				
Robinson (B)	.965	.066	.904	.077
Ball	<0	.843	*	*
MacKinnon	.050	.091	*	*
State House District 92:				
Christian (B)	.814	.640	.837	.581
Lynch	.186	.360	.163	.419
State Senate District 2:				
Maxwell (B)	.922	.566	.890	.133
Rogers	.078	.434	.110	.867
2001 GENERAL ELECTIONS				
State House District 63:				
Bland (B)	.675	.359	.647	.394
Dance (B)	.325	.641	.353	.606
State House District 71:				
Baskerville (B)	.991	.563	.949	.606
Elliott	.009	.437	.051	.394
State House District 74:				
Miles (B)	.714	.484	.712	.496
Green	.273	.337	*	*
Motley	.012	.180	*	*

*EI estimates are for leading candidate against all other candidates

	Ecological Regression		*Ecological Inference*	
	Black Vote	Non-Black Vote	Black Vote	Non-Black Vote
State House District 90:				
Sears	.104	.889	.206	.857
Robinson (B)	.896	.111	.794	.143
State House District 92:				
Christian (B)	.967	.370	.814	.544
Bryant	.033	.630	.186	.456
State House District 95:				
Crittenden (B)	.963	.353	.953	.329
Johnson	.037	.647	.047	.671
PRIMARIES				
State House District 75: Dem. Primary 1993:				
Councill	<0	.946	.369	.734
Holmes (B)	1.000	.054	.631	.266
State House District 77 Dem. Primary 1993:				
Spruill (B)	.455	.972	.484	.728
Olds	.545	.028	.516	.272
State House District 74 Dem. Primary 1995:				
McEachin (B)	1.000	.671	.829	.485
Ball	<0	.329	.171	.515
State House District 89 Dem. Primary 1995:				
Jones (B)	.631	.879	.650	.844
Willis	.369	.121	.350	.156
State House District 74 Dem. Primary 1997:				
McEachin (B)	.953	.855	.943	.916
Motley	.047	.145	.057	.084
State House District 75 Dem. Primary 1997:				
Councill	.171	1.000	.517	.724
Brown (B)	.829	<0	.483	.276

Source: Ronald Keith Gaddie. 2003. "An Evaluation of Racial Polarization and the Election of Minority Legislative Candidates of Choice in the Vicinity of Virginia Congressional Districts 3 and 4." Prepared for *Hall v. Commonwealth,* June 2003.

TABLE 10

SUPPORT FOR BLACK CANDIDATES OF CHOICE, CONTROLLING FOR OPPONENTS, GENERAL ELECTIONS,

Black Candidates Of Choice's:	*Opponent is:* White, GOP	Black, GOP	White, Ind.
Total Vote Share	.573	.630	.744
Estimated Black Vote Share (Eco. Reg.)	.860	.810	.930
Estimated Black Vote Share (Ei)	.848	.776	.904
Estimated Non-Black Vote Share (Eco. Reg.)	.301	.424	.513
Estimated Non-Black Vote Share (Ei)	.368	.496	.504
N	15	2	15

Source: Derived from the data in Table 9.

FIGURE 1

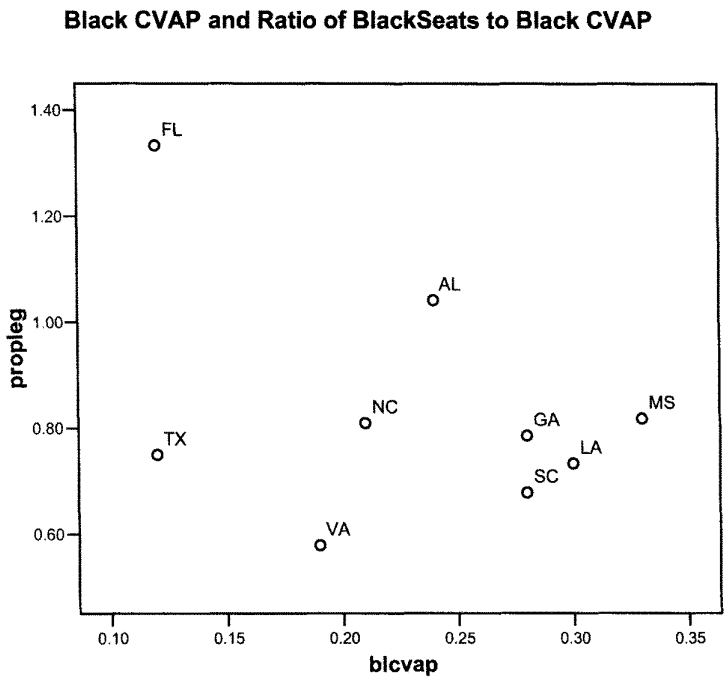
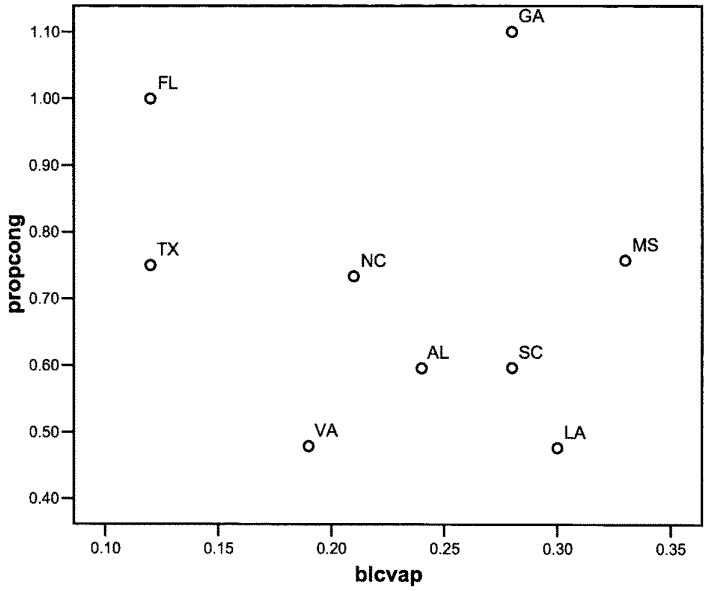

Black CVAP and Ratio of BlackSeats to Black CVAP
propleg
1.40
1.20
1.00
0.80
0.60
FL
AL
NC
TX
GA
MS
LA
SC
VA
0.10
0.15
0.20
0.25
0.30
0.35
blcvap

FIGURE 2

Black CVAP and Ratio of Black Congressional Seats to Black CVAP



APPENDIX TO THE STATEMENT OF EDWARD BLUM: AN ASSESSMENT OF VOTING RIGHTS PROGRESS IN FLORIDA, EXECUTIVE SUMMARY AND STUDY

EXECUTIVE SUMMARY

By Edward Blum and Abigail Thernstrom

The open voting access of African-Americans resulted in Florida not being initially subject to Section 5 of the Voting Rights Act. The subsequent, new trigger mechanism adopted in 1975 made five Florida counties subject to Section 5's "preclearance" requirement: Collier, Hardee, Hendree, Hillsborough, and Monroe. Hispanics have subsequently supplanted African-Americans as the state's largest minority group. Of the state's 2.7 million Hispanics, over 48 percent live in Dade County. Florida's five Section 5 counties do not contain the bulk of the language minorities in the state.

The rate at which voting age Latinos have registered to vote in Florida has increased slightly over the last quarter century. The percent rate of age-eligible Latinos registered in Florida exceeded that for Hispanics outside the South since 1986 (with the exception of 1994). The Census Bureau estimates for turnout indicate no consistent change in the share of the Latinos of voting age who have cast ballots in Florida.

Census Bureau estimates of black registration indicate no consistent increase in the share of the African-American voting age population that has registered in Florida. Moreover the rate at which Florida African-Americans registered to vote continues to be lower than in the rest of the nation. The Florida Secretary of State shows the numbers of blacks registered to vote increasing from 1996 to 2004. Census Bureau turnout estimates continue to show African-Americans voting at much lower rates than do Anglos. From 1980 until 2004, there is no evidence of the disparity between the two races being closed. African-Americans report voting at lower rates in Florida than in the non-South.

Minorities have made significant gains in terms of descriptive representation in Congress. The percent of the congressional seats filled by each minority group approximates the group's share of the voting age population in the state. Florida's African-Americans have even larger shares of the seats in the state legislature and hold a larger percentage of the seats than their share of the voting age population. Latinos hold smaller shares of the seats in the Florida legislature than congressional delegation.

In the Section 5 counties, the Latino population is either too small or too scattered to facilitate election of Hispanics. It is typically impossible to draw a state legislative district or congressional district entirely in these counties in which the bulk of the population is Latino. The one exception comes in Collier County where many Latinos are combined with an even larger Latino population in neighboring Dade County.

Estimates of voting preferences of Latinos in South Florida raise questions about the desirability of combining Dade Latinos with Collier or Monroe Latinos. The Latino population in Dade is heavily Cuban and provides strong support for Republicans. In Collier and other south Florida counties, the Latino electorate is more inclined to support Democrats. Thus while a district that straddles the Collier-Dade boundary is likely to elect a Latino and thus provide descriptive representation for that ethnic group, the

winner may well not be the candidate of choice of the Latinos in Collier, the county that is covered by Section 5 of the Voting Rights Act.

An Assessment of Voting Rights Progress in Florida
Prepared for the American Enterprise Institute

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An Assessment of Voting Rights Progress in Florida

When the Voting Rights Act was initially passed in 1965, Florida was among the minority of southern states not be subject to Section 5. The official statistics kept by the Florida's secretary of state showed 51.2 percent of the adult black population to be registered at the time of the 1964 presidential election. Moreover the state's 3,087,699 voting age citizens (1960 census) cast 1,854,481 votes, easily exceeding the 50 percent threshold needed to avoid the trigger mechanism in the 1965 legislation.

The majority of African-Americans were registered even though in a few Panhandle counties, African-American registration rates were similar to those found north of the Florida border in south Alabama and Georgia. For example, in two counties (Lafayette and Liberty), each with fewer than 250 adult African-Americans, none were registered to vote.[1] In a few other north Florida counties black registration rates were low standing at only 11.6 percent of the age eligible blacks in Gadsden, the state's only majority black county.

By the fall of 1966, the figures maintained by Florida's secretary of state showed black registration rising to 63.6 percent of the age eligible. In Lafayette County black registration had risen from zero to 67.1 percent while in Liberty it had gone from zero to 73.8 percent. In Gadsden County black registration remained low although it had tripled in the course of two years to 37.7 percent. By 1966, only ten counties had less than half of the adult blacks registered and in only one county were fewer than a third of the adult blacks registered. The one county that continued to show little progress was Union where black registration increased from 11.8 to only 16.2 percent. The report prepared by the U.S. Commission on Civil Rights shows that of the eleven states of the old Confederacy, a higher proportion of Florida's adult blacks were registered to vote in the aftermath of the Voting Rights Act than in any other state except Tennessee. [2]

The relatively open access African-Americans had to the ballot box in Florida resulted in the state not being made subject to Section 5 of the Voting Rights Act when the Act was extended (in 1970). The subsequent, new trigger mechanism adopted in 1975 made five Florida counties subject to Section 5 and the preclearance requirement. The five counties to which Section 5 of the Voting Rights Act as amended in 1975 applied because of the concentrations of Spanish-speakers were Collier, Hardee, Hendree, Hillsborough, and Monroe (see Map 1).

(Map 1 goes here)

Coverage of a jurisdiction by the preclearance provision of the Voting Rights Act is determined by a formula in Section 4. This formula had two components in the original

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[1] U.S. Commission on Civil Rights, *Political Participation* (Washington, D.C.: U.S. Government Printing Office, 1968), pp. 230-231.

[2] *Ibid.*, pp. 222-223.

1965 Act. First, the state or political subdivision maintained a "test or device" restricting the opportunity to vote as of November 1 1964.[3] Second, less than half of the state or political subdivision's voting age population had registered to vote on November 1 1964, or had cast a ballot in the 1964 presidential election.

The 1975 reauthorization extended the provisions of the act to address low voting rates among linguistic minorities, defined as "American Indian, Asian American, Alaskan Natives" or people "of Spanish heritage." The reauthorization recalibrated the presence of tests or devices and levels of electoral participation to November 1972, and the definition of "test or device" was rewritten to encompass the provision of minority language electoral information to political subdivisions and states where a linguistic minority constituted more than five percent of the citizen VAP. The minority language provision triggers coverage of any jurisdiction where: Over five percent of the voting-age citizens were members of a single language minority group as of November 1, 1972; registration and election materials were provided only in English in 1972; and fewer than 50 percent of the voting-age citizens were registered to vote or voted in the 1972 Presidential election.

Since the 1975 Voting Rights Act brought five Florida counties under Section 5, much has changed in the Sunshine State. Thousands of immigrants have come to the state from Latin America. Latinos have supplanted African-Americans as the state's largest minority group. Most of Florida's Hispanic population lives in the southern part of the state. Of the state's 2.7 million Hispanics, over 48 percent live in Dade County, and over 62 percent (1,674,581) live in Dade, Broward, Collier, and Monroe. Florida's five Section 5 counties do not contain the bulk of the language minorities in the state. The covered county with the largest linguistic-minority population of the five covered counties – Hillsborough – has a Hispanic population so dispersed that the crafting of minority-majority districts for the population in the county is impossible at present.

What Moreno and Hill describe as the "South Florida Economic Enclave" – the combination of Latino-targeted businesses and services for a growing, vibrant Latino working and middle class – is expanding out of Dade County and into Collier County.[4] According to Moreno and Hill, the western part of Collier County is an effective extension of Dade County; a similar phenomenon is at work in the upper Keys, where most of the population of Monroe County is located. Since the 1980s, this economic enclave has also been a source of Latino political mobilization, in no small part due to the ABC ("Anybody But A Cuban") movement among Miami whites in the 1970s and 1980s. Dade County Latinos have been highly mobilized ever since.

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[3] The Act defined a "test or device" as requirements such as a literacy test, a good character test, or requiring that another registered voter vouch for an applicant's qualifications to vote.

[4] *Ibid.*

Florida's 2000 census indicates a state population that is 14.4 percent black and 16.8 percent Hispanic. Of the voting age population of 12,336,038, 12.7 percent are black and 16.1 percent are Hispanic. In 2000, Latinos accounted for 11percent of the registered voters in Florida. Approximately 802,000 of the state's 1,265,000 voting age Latino citizens were registered to vote. Among registered Latinos, approximately 678,000 turned out in 2000 (84.5percent).

Minority Registration and Turnout

The U.S. Bureau of the Census conducts surveys to determine the rates at which citizens register and participate in general elections. The data on registration and turnout are self-reported and, consequently, tend to overestimate actual levels of participation. While Florida maintains official records on registration by race it does not report turnout data by race and ethnicity as do the other four states that record the race and ethnicity of registrants. Consequently, the Census Bureau reports, while probably inflating estimates of participation, are the best data available on turnout and can be used for comparative purposes across time and across states on the assumption that the inflation is of similar magnitude across time and space. Moreover these are the kinds of estimates that the Census Bureau used in determining whether low registration or turnout rates made jurisdictions subject to the trigger mechanisms included in the 1965, 1970 or 1975 versions of the Voting Rights Act.

Table 1 provides the Census Bureau estimates for registration in Florida from 1980 through 2004 for Latinos, blacks and whites. As the table shows, Latinos sign up to vote at a substantially lower rate than do Anglos or Blacks. The range in Latino self-reported registration is from a low of 22.7 percent in 1994 to a high of 39.1 percent in 2002. After bottoming out in 1994, Latino registration has exceeded 35 percent in each of the last five elections and the two most recent elections had the highest Latino registration rates in the 24 year period. Nonetheless, at their highest level of registration (2002), the rate at which Latinos signed up to vote is almost nine percentage points below that for blacks and more than 20 points lower than for Anglos. Despite the persisting disparities, the differences across ethnic groups have narrowed. In the early 1980s, Latinos registered at rates approximately 25 percentage points lower than those for blacks and often 30 percentage points below the registration rate for Anglos.

(Table 1 goes here)

The bottom half of Table 1 provides comparable registration data for the non-South. When Florida Latinos are compared with those outside of the region, Table 1 shows that prior to 1986, the figures outside the South exceeded those in Florida. The largest difference came in 1982 when just over a third of the non-South Hispanics but barely a quarter of the Florida Hispanics reported registering. Beginning with 1986, Florida Latinos register at higher rates than do their peers outside the region with the single exception of 1994. In that year, the rate for Latino registration in Florida, 22.7 percent, is the lowest for the time under review and is approximately 13 percentage points below the

figure for either 1992 or 1996. The Florida figure in that year is 6.4 percentage points below that for the non-South. In most of the other elections over the last 20 years, the Florida figures have been slightly above those for the non-South. The greatest difference comes in 2002 when 39.1 percent of the Florida Latinos compared with 30.6 percent of those outside the South claim to have registered to vote.

In the 30 years since passage of the 1975 Voting Rights Act, the rate of Hispanic registration has increased slightly in Florida. Also over that time period, Florida Latinos have become more likely to register than have their peers outside of the region.

Table 2 presents the Census Bureau estimates of turnout from 1980-2004. Hispanic turnout is consistently lower than that for either Anglos or Blacks. The proportion of the adult Florida Latino population that has gone to the polls ranges from a low of 18.6 percent in 1982 to a high of 34.1 percent in 1988 and 34.0 percent in 2004. Like for the other ethnic groups in the state, Latino participation follows a see-saw pattern rising in presidential years then dropping in mid-term elections. The range in Latino turnout in presidential years is narrow going from a low of 29 percent in 1996 to a high of 34.1 percent in 1988. The range of participation in mid-term elections is greater with a low of 18.6 percent in 1982 and a high of 28 percent in 1986. The greatest participation of Latinos in mid-term elections does not quite equal their lowest rate of participation in presidential elections.

(Table 2 goes here)

Florida Latinos vote at lower rates than do either African-Americans or Anglos. The biggest disparity between Latino and African-American turnout comes in 1980 when just over half of the Florida black voting age population voted compared with 29.3 percent of the Latino voting age population. Twenty-four years later, the disparity had shrunk to just over ten percentage points. In the first three mid-term elections in Table 2, blacks voted at rates at least eleven percentage points higher than Latinos. In the most recent mid-term election, the gap had narrowed to 5.6 percentage points. In the 1980s, Anglo turnout often exceeded Latino turnout by 25 percentage points. Roughly this disparity showed up again in 2004. The smallest difference in Latino and Anglo turnout rates came in 2002 when the white turnout rate exceeded that for Latinos by 17.4 percentage points.

Over the last quarter century, Hispanic turnout in Florida has increased slightly. In the first two presidential elections, it stood just below 29 percent. In the most recent elections, it exceeded 31 percent and hit 34 percent in 2004. Latino turnout in mid-term elections has ranged from 18.6 percent in 1982 to 27.4 percent in 2002 and 28.0 percent in 1986.

Materials in the lower half of Table 2 permit a comparison of Hispanic participation in Florida and the non-South. For the first three elections, Latinos outside the South voted at higher rates than in Florida with the greatest difference coming in 1982 when 25.8 percent of the non-southern Latinos compared with 18.6 percent in Florida voted.

Beginning with 1986, Latino turnout in Florida has exceeded that in the non-South in every year except in 1994 when the non-southern figure marginally exceeds that for Florida with both being just above 20 percent. In some years, the Florida figure was only marginally higher than that for the non-South (1990 and 1998). In 2002, Florida Hispanics were much more likely to vote than Hispanics outside of the South with 27.4 percent of the Florida adults compared with 18.2 percent of the non-southern adults reporting voting.

Florida's Secretary of State, the official responsible for maintaining registration records, reports on the numbers of voters registered by race but does not give a separate enumeration for self-identified Latinos or those who have Spanish surnames. We suspect that many but not all of those in the "other" category are Latinos. Table 3 presents the tabulations for the period 1994 through 2004.

Since 1996, the number of "other" registrants has doubled from about 580,000 to almost 1.2 million while white Anglo registrants have increased from 6.57 to 7.48 million. Black registration has increased from 845,000 in 1996 to over 1.2 million by 2004. Black voters still outnumber the "other" category despite there being fewer African-Americans in Florida's adult population than Hispanics. By 2004, African-Americans constituted 11.9 percent of the registered electorate in Florida which is only slightly less than the 12.7 percent of the state's voting age population that was black in 2000. The "other" category makes up 11.6 percent of Florida's registrants in 2004 which is well below the 16.1 percent of the Florida population identified as Hispanic in 2000. It is likely that some share of those voters whose race or ethnicity is unknown are also Latinos. As Table 3 demonstrates, the number of registrants opting not to indicate their race or ethnicity has almost doubled between 2000 and 2004.

(Table 3 goes here)

Elections of Minority Officials

The first available figures in the numbers of Latino elected officials in Florida come from the mid 1980s when fewer than 50 served. Over the next two decades, the numbers of Latinos holding office has doubled. As reported in Table 4, until 2000, separate breakouts were available for different kinds of local offices. These figures show that most Latinos served in municipal offices with relatively few holding county or school board positions. In the most recent years, no separate break out is available but it seems reasonable to assume that municipalities continue to be the locale from which most Latinos are elected.[5]

(Table 4 goes here)

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[5] "2004 Primary Election Profiles, "National Association of Latino Elected Officials.

The period for which the numbers of African-American office holders in Florida exists is much longer extending back to 1969. As Table 5 shows, in 1969 the state had only 24 African-Americans holding office. By 1980, the number exceeded 100 and since 1993 there have been more than 200 black office holders. In the early years, more than 80 percent of the African-American Officials served in cities. While municipalities continued to be the location from which most blacks get elected, now only little more than one half of the black officials serve in cities. The number of African-Americans holding county office has grown from one to 29 in 2001 while the number of serving on school boards has grown from zero in 1969 to 15 or 16, a number that has fluctuated over the last 20 years.

(Table 5 goes here)

Minorities in Congress

In a special election held in August 1989 to fill the vacancy created by the death of Claude Pepper, Ileana Ros-Lehtinen became the first Cuban American elected to Congress. She is also the first Hispanic woman to be elected to Congress from any state. This continued Ros-Lehtinen's string of firsts. In 1982, she had become the first Latina elected to the Florida legislature.[6] The congressional district that elected her was 51 percent Spanish origin as of 1980. When she was elected, it was estimated to be 37 percent Cuban-American.[7]

Three years after her initial election a second Cuban American, also from Miami joined Ros-Lehtinen. The new legislator, Lincoln Diaz-Balart, won his seat as a result of a districting plan that created a second heavily Hispanic district. Diaz-Balart, who had been in the Florida legislature for the previous six years, attracted no opposition in either the primary or the general election as he won this district more than 70 percent Hispanic.

Following the 2001 redistricting, South Florida had a third predominately Hispanic district. This district elected Mario Diaz-Balart the younger brother of Lincoln who had followed his older sibling into the Florida Senate.[8]

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[6] The first Hispanic to serve in the Florida Legislature was Fernando Figueredo of Key West, who represented Monroe County in 1885. The first modern Hispanic to serve was Roberto Casas, a Democratic state house member (and later state senator) from Hialeah in Dade County, who was elected in a special election in January 1982. See Allen Morris,. *The Florida Handbook, 1989-1990.* Tallahassee: The Peninsular Publishing Company, (1989) p.149.

[7] Phil Duncan, editor, *Politics in America, 1992* (Washington, D.C.: Congressional Quarterly Press, 1991), p. 341.

[8] Sometimes called the "Cuban Kennedys", the Diaz-Balarts also count among their numbers a successful investment banker (Rafael) and a highly regarded TV broadcaster (Jose) who broadcasts for Telemundo and the Miami NBC affiliate.

Since 2003, Florida has had three Cuban-American representatives along with three African-Americans. Three black legislators entered Congress in 1992 as a result of a racially gerrymandered map drawn by a Tulane Law professor working for a three – judge federal panel. The map created a compact majority-black district in Miami and two others that were among the many strange shapes fashioned to satisfy U.S. Department of Justice demands in the early 1990s. Arguably the stranger of the two Corrine Brown's third district, became known as the "bugsplat" or "fishhook" district. It extended just inside of the Atlantic coast from Jacksonville all the way down to Orlando. The western arm of the district reached from Jacksonville as far south as the university city of Gainesville.

After this district was successfully challenged, following *Shaw v. Reno*, its black concentration dropped from 55 to 47 percent. In the wake of the reduced black concentration, Brown attracted relatively serious Republican challengers but has retained her seat.

Another majority-black district contained portions of St. Lucie, Martin and Palm Beach counties that formed a rough rectangle but had a long tail that ran south along the Florida East Coast Railroad to pick up Fort Lauderdale's black population and finally gathered up a few more African-Americans in the northern part of Dade County. This district elected Alcee Hastings, who had been impeached and removed as a federal district court judge. Hastings continues to represent that district.

The compact African- American district in Miami elected Carrie Meek, a 24-year veteran of the Florida legislature. She retired after a decade and the seat is now held by her son Kendrick.[9]

Table 6 indicates the racial and ethnic composition of Florida's 25 current congressional districts. The three districts electing African-American representatives – districts 3, 17, and 23 – constitute almost half of all the districts that cast a majority of their votes for Al Gore for president in 2000. The three Hispanic-majority congressional districts (18, 21 and 25) all elect Republican Latino representatives, and these districts are solidly Republican. Of the twenty-five congressional districts, eight enter at least one of the five counties subject to Section 5. Two of the Hispanic-majority congressional districts and one of the districts with a performing majority for blacks are subject to preclearance review.

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[9] The last of the Reconstruction blacks to serve in the Florida Legislature were George A. Lewis and John R. Scott, Jr., who were represented Duval County (Jacksonville) in 1889. It would be almost 80 years until Joe Lang Kershaw was elected to the legislature from Dade County in 1968. The first black woman to serve in the legislature was attorney Gwen Cherry, elected to the house from Dade County in 1970. Carrie Meek was the first black woman to serve in the state Senate. In 1983 Meek and Arnette Girardeau from Jacksonville desegregated the Senate.

(Table 6 goes here)

With three Hispanic and three black members of Congress, each minority group holds 12 percent of Florida's 25 congressional seats. The proportion of the seats held by each of the two minority groups roughly approximates the groups' share of the Florida voting age citizen population which is 13.3 percent African-American and 14.9 percent Hispanic.

Minorities in the Legislature

Table 7 reports the numbers and percentage of the Florida legislators who are Latino. In 1985, six years after the beginning of the Cuban-American mobilization in response to the English-Only movement in Miami, a total of four Hispanic legislators served in the state House, but none in the Senate. By 1991, three Hispanics served in the Senate and eight were in the House. After the 1992 redistricting two more Latinos got elected to the House. Following the implementation of new maps in 2002, Latinos held thirteen House seats. Latino numbers in the Senate have held constant at three since 1991. These numbers, while below the Hispanic proportion of the voting age population, do track closely with the proportion of registrants in the "other" category in Table 3 (11.6 percent) compared with 10.8 percent of the representatives. A greater disparity persists with share of Senate seats held by Latinos (7.5 percent).

(Table 7 goes here)

The first African-American to enter the Florida House did so in the latter half of the 1960s. As reported in Table 8, the numbers of blacks grew slowly until the 1981 redistricting after which their number increased from four to eleven. In the succeeding 22 years, the African-American presence in the House has grown slowly but following the 2001 redistricting, now stands at 14.2 percent of the 120 member House chamber. The share of House seats held by African-Americans exceeds the black percentage in Florida's voting age population (13.3).

(Table 8 goes here)

The first black senators won seats following the same early 1980s redistricting that triggered the almost trebling of House African-Americans. Throughout the life of that districting plan, the Senate had two black senators. With the 1992 redistricting, black senators increased to five members and by 2005 their numbers had reached seven so that they hold 17.5 percent of the chamber's seats.

Statewide Officials

In 1986 Bob Martinez became the Sunshine State's only governor of Spanish heritage. This Republican had previously served as mayor of Tampa and is thus not part of the wave of Cuban-Americans who came to South Florida in the wake of Fidel Castro's take

over of the island. Martinez was a former union organizer and had once been a Democrat.

Martinez had several major stumbles during his term. Almost immediately after winning election, he proposed to levy a sales tax on services. This proposal angered two significant players in Florida politics, since it would have required the collection of sales taxes from professionals, such as lawyers, and would also have taxed advertising such as appears in newspapers. Since this misstep came early in his tenure Martinez had time to make amends and perhaps secure a second term. The second miscue came towards the end of his term and sealed his fate. Immediately after the Supreme Court opened the way for states to impose some limits on access to an abortion, Martinez called a special session of the legislature. However, with Democrats controlling both chambers and eager to embarrass the Republican governor, his proposals were not enacted thus suggesting a lack of both political muscle and political acuity. In his 1990 bid for reelection, Martinez fell to former Senator Lawton Chiles.

In 2004, Mel Martinez became the first Cuban American to win a U.S. Senate seat. He also became one of only two Latinos to serve in the 109th Senate as he joined fellow freshman Ken Salazar from Colorado. Martinez is the only Republican Latino senator.

In 1976, Joseph Hatchett won a seat on the Florida Supreme Court. At that time, membership on the state's highest tribunal was filled in contested elections. Subsequently in elections to the Florida bench candidates run on their records and simply seek a confirmation vote, a format known as the Missouri Plan. Upon Hatchett's election to the Supreme Court, he became the first African-American not only to serve on that body but also the first to win a statewide election in the South.[10]

The first African-American to serve in a statewide Florida constitutional office was Douglas Jamerson who was appointed by Governor Lawton Chiles to fill the vacant position as Commissioner of Education. Jamerson, who had served in the Florida House since 1982, failed in his 1994 bid for a full term. In an election that saw the two parties split the eight statewide contests on the ballot, Jamerson polled 46.6 percent of the vote. This was the weakest showing for any Democrat seeking a constitutional office but was substantially stronger than the 29.5 percent of the vote polled by the Democratic nominee who was crushed by Senator Connie Mack, the Republican returned to the U.S. Senate.

Representation and the Section 5 Covered Counties

The Hispanic population in the Section 5 counties as of 2000 totaled slightly fewer than 300,000. As Table 9 shows this population is disproportionately located in Hillsborough County, which accounts for two-thirds of the total for the five counties. In three of the counties, less than 20 percent of the population is Hispanic. In the two counties where Hispanics constitute more than a third of the population, their numbers are small. Since

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[10] Hatchett Biography found at www.floriasuprenecourt.org/about/gallery/hatchett.html.

the average population for a Florida House District was 133,186 at the time of the most recent redistricting, only Hillsborough had a Hispanic concentration large enough to constitute the majority of a state House district. Even if all Collier Hispanics lived in the same House district, they would not equal half the district population. In any of the five counties, except of Hillsborough, if Hispanics in the Section 5 counties are to live in a predominantly Latino House district, they will have to be combined with Hispanic concentrations in neighboring counties.

(Table 9 goes here)

The heaviest concentration of Hispanics in Florida lives in the five southernmost congressional districts but these are dominated by Dade County and it is not subject to Section 5. Hispanics constitute 51.5 percent of the voting age population in these congressional districts. In both of the southernmost counties covered by Section 5 – Monroe and Collier – the bulk of the Latino populations in congressional districts that currently elect Latino candidates of choice from majority-Latino districts based in Miami-Dade.

Hillsborough County

Hillsborough County is 15 percent black and 18 percent Hispanic. Of the twelve legislators in Hillsborough County's state house delegation, two are a black (16.7 percent of all representatives), reflecting a proportional level of representation for the black community from Hillsborough County while the third is a Latino.

As indicated in Table 10, the Hispanic population is widely dispersed across Hillsborough county. None of the dozen state House districts entering Hillsborough are majority Hispanic by VAP; indeed, the most heavily-Latino district, 58, is just 38.4 percent Latino VAP. This is also the most-heavily-Latino district in the state House to be represented by a Democrat Bob "coach" Henriquez, a Latino, represents the 58th District. Of the dozen legislators in Hillsborough, three are Democrats, , and they represent the three most-heavily-minority districts in the county and each belongs to a minority group.

(Table 10 goes here)

Hillsborough County House has two majority black state House districts. House District 55, which stretches as a narrow urban ribbon from Saint Petersburg through Bradenton and south to Sarasota, is 50.1 percent black VAP and is a safely Democratic with a 64 percent Democratic registration. It voted almost 76 percent for Al Gore. The incumbent representative, Frank Peterman, is an African-American.

House District 59, which runs from the University district into Tampa and then through Palm River to Progress Village, has a 52.6 percent black VAP and an additional 13.6 percent Hispanic VAP. The district is safely Democratic (it voted over 75 percent for Al Gore in 2000) and is currently represented by an African-American, Rep. Arthenia Joyner.

State Senate District 18, largely located in Hillsborough County but also taking in portions of Pinellas and Manatee counties, covers much of the same geography as House Districts 55 and 59. The district is only 42 percent black and 18.9 percent Hispanic by population and just 37.4 percent black VAP and 17.2 percent Hispanic VAP. The district is solidly Democratic, and currently elects an African-American senator, Les Miller. Miller is one of four senators representing all or part of Hillsborough County (25 percent of all senators). Initially elected in 2000, Miller is currently the Senate Minority Whip.

The three member of Congress currently representing parts of Hillsborough County are all Anglos. Two are Republicans while Jim Davis is a Democrat.

Hispanics hold two judgeships and one school board slot in Hillsborough. In addition Tampa's mayor and three council members have Spanish surnames.

Collier County

The only majority-Latino state House district in the covered counties is House District 112 which encompasses southern Collier County from east of Naples and Marco Island, and then continues into northeastern Dade County and also picks up a small portion of Broward County (Miramar and Pembroke Pines). This district was drawn in response to an objection by the Justice Department to the initial plan for the continuation of the majority-Hispanic district in Collier County. Under the initial plan, House District 101 was to be a successor to a majority-Hispanic district (HD 102) that entered Collier County (see Map 2). Florida lawmakers contended that the creation of additional Hispanic representation opportunities elsewhere in the state compensated for the elimination of District 102 in Collier, thereby mitigating any retrogressive effect. DOJ rejected this proposition noting that such an approach "would require a Section 5 review and assessment of all districts within a state, even where the statutory formula only identified individual counties for coverage. This is contrary to the plain meaning of Congress' coverage determinations and is an approach we therefore reject."[11]

(Map 2 goes here)

The state argued against including part of Collier in a district with Dade County because to do so would mitigate against creating an eleventh majority Hispanic district in Dade. Alternative proposals demonstrated how to create a majority Latino district in Collier while maintaining eleven Hispanic majority districts in Dade County.

The Justice Department cited "clear evidence" of the need to maintain a Hispanic-majority district in Collier County based on the willingness of Latinos to vote for and the unwillingness of Anglo whites to vote for Hispanics in Collier County. The old majority-

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[11] Letter from Ralph D. Boyd to Sen. John McKay and Rep. Tom Feeney, July 1, 2002, page 3.

Hispanic district afforded an opportunity for Hispanic voters to elect representatives of choice. The state responded to the objection by extending a 66.7 percent Hispanic VAP district – District 112 – into Collier. David Rivera, an Hispanic Republican from Miami, represents the 112th District.

District 101 still retains a substantial Hispanic VAP minority (30.7 percent). Given demographic trends in western Broward County and Collier County, it is possible that this district might have a Hispanic majority in the coming decade.

The 25th Congressional District represented by Mario Diaz-Balart contains most of the area of Collier, Monroe and Dade counties and thus is represented by a Republican Latino. However estimates reported in Table 13 show Collier Latinos overwhelmingly rejecting Diaz-Balart in favor of his Democratic opponent.

It does not appear that Collier has any Hispanics serving as elected county officers.

Monroe County

Monroe County is contained within state House District 120 and Senate District 39, which also encompasses parts of Collier County and Hendry County. House District 120 elects an Anglo Republican; Monroe County last sent a Latino to the state legislature in the 19th century. Senate District 39 is 32.0 percent black and 30.6 percent Hispanic by voting age population, and encompasses most of the Latino population of Collier County. The senator from the district, Larcenia Bullard, is an African-American Democrat who was initially elected to the House in 1992 and to the Senate in 2002. This election of a Black Democrat from a combined majority-minority district was forecast by Moreno and Hill, who observed in May 2002 that "whereas [elsewhere] one might combine black and Hispanics into a 'majority-minority' district in [sic] and have the district perform for Hispanic candidates, here [in South Florida] such a district would almost assuredly elect a black, not a Hispanic, candidate of choice" due to the generally Democratic voting habits of Anglo whites in South Florida.[12]

The bulk of Monroe County is in Congressional District 25 although the Keys are in District 18. Consequently all of the county currently has a Republican, Latino legislator. Mario Diaz-Balart represents the 25th while Ileana Ros-Lehtinen represents the 18th. Although we back estimates of Latino voting behavior in Monroe for these members of Congress, Table 11 suggests that Monroe Hispanics may have preferred the unsuccessful Democratic challengers.

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[12] Dario V. Moreno and Kevin A. Hill. "Expert Report on South Florida's Congressional Districts 17, 18, 21, and 25." Submitted in *Martinez v. Bush,* 234 F. Supp. 2d 1275 (SD Fla. 2002), page 1.

Hardee County

Hardee County has a population of 27,987 and is 35.7 percent Hispanic. The county is wholly contained in House District 66 and Senate District 17. Latinos make up 11.3 percent of the population in the state Senate District and 15.2 percent of the House district population. Hardee County residents account for approximately one-third of Hispanics in the Senate district and two-thirds of residents in the House district. The House seat is held by an Anglo Republican. Hardee does not appear to have any Hispanics in elective office.

Hendry County

Hendry County has a population of 36,210, and is 39.6 percent Hispanic. Like Hardee, the Hispanic population is insufficient to constitute a viable core of a performing minority district, and, unlike Collier and Monroe counties, Hendry is too distant to be joined with the larger, politically-active Latino population in Dade County in creating minority representation opportunities. The state representative for Hendry is a white Republican from Highlands County. Hendry does not appear to have any Hispanic elected officials.

Racial Voting Patterns

Florida's two major minority groups affiliate with opposing parties. African-Americans in the Sunshine State, like elsewhere, constitute the core constituency for the Democratic Party, regularly voting for its nominees in overwhelming numbers. In contrast, Cuban-Americans, who have been the most politically active Latinos in the state, have been staunchly Republican, attracted to the GOP by its outspoken opposition to the regime of Fidel Castro. Because of their differing loyalties, African-Americans have generally seen their preferred candidates elected when Democrats have triumphed while Latinos have seen their preferences put in office when Republicans have succeeded.

The political loyalties of Florida Latinos may be changing. While the Cuban-American population continues to be solidly Republican, some evidence suggests that younger members of community are less committed to the GOP. Latinos who originate from some place other than Cuba are much less supportive of Republicans and, for the most part, back Democratic candidates. Alvaro Fernandez, the Florida director for the Southwest Voter Registration and Education Project, notes that "70 percent of Hispanics in Florida aren't Cuban" as evidence of the need to organize and register those Latinos as a potential bloc of voters for the Democratic party.[13]

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[13]Harold Meyerson, "The Rising Latino Tide in Florida and Texas," *American Prospect* (November 18, 2002), accessed at http://www.prospect.org/print/V13/21/meyerson-h.html.

One distinguishing feature of the Dade County Hispanic community is that it is more heavily Cuban than the surrounding communities. Outside Dade County, in Monroe, Collier and Broward, Cubans are less numerous among the Hispanic population. These Hispanic populations are also less concentrated than in Dade County. The Cuban-non-Cuban distinction may be important from the perspective of cultural anthropologists. In the realm of politics, Latinos in Florida are closely tied by anti-communist sentiment across Cubans, Nicaraguans, Colombians, and Venezuelans, by a sentiment opposing English-Only laws, and support for a variety of urban issues.[14] The trial court in *Martinez v. Bush* recognized the lack of political distinction within these communities, and like the Justice Department, considers Latinos in Florida to be a cohesive voting bloc regardless of national origin.

What is especially instructive about the Latino vote in Florida is that it is so strongly defined by the Republican Party. Moreno and Hill's analysis of eight contests ranging from the statewide level down to local judicial races revealed a powerful relationship in South Florida between Hispanic population and vote choice. In partisan races, these preferences always broke to the advantage of Republican candidates, even when the contest was between two Hispanics. Running a Latino as a Democrat did not reduce Hispanic Republicanism.[15]

While various groups can claim credit when their preference wins an election, the Latino vote has been critical in electing Republicans in several closely contested elections. Exit polls indicate that George Bush won 54.5 percent of Florida's Hispanic vote in 2000 on his way to carrying the state by fewer than 600 votes and thus winning the presidency. In 2004, Mel Martinez would have lost his bid for the Senate but for the support of 53.1 percent of the Latinos who went to the polls. While the Latino vote tipped the scales in favor of Republicans in these two high profile contests, the divisions within that community point up how inaccurate the stereotype of a cohesive, pro-GOP Latino vote has become.

Table 11 provides further evidence that the legacy of South Florida Cubans as a consistent, 80 percent Republican vote misstates Hispanic preferences statewide. Democrats have made recent inroads among other Hispanic voters, increasing their share from one-in-three or one-in-four Hispanic votes in 1994 to being highly competitive and nearing parity by 1998.

(Table 11 goes here)

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[14] *Ibid*, page 19-28; see also Kevin A. Hill and Dario V. Moreno, "A Community of a Crowd? Regional and Ethnic Block Voting in the Florida Legislature, 1989-1996." Typescript, Florida International University, Miami, FL 33199 (www.fiu.edu/~khill/florida.htm).

[15] Moreno and Hill, 2002, *op. cit.*, Figures 6-14 and pages 33-36.

Differences are in evidence with regard to Hispanic participation and also Hispanic preferences when comparing Collier and Monroe Counties to the more urban Dade County. Moreno and Hill provide estimates of Hispanic, black, and Anglo white voter turnout for elections in 1998 and 2000 for four south Florida counties (see Table 12). In 2000, Moreno and Hill find comparable rates of Hispanic and Anglo participation in Dade County, and Hispanic turnout was between black and Anglo turnout rates in the previous midterm election in 1998. Hispanic turnout is a third less in Monroe and 50 percent less in Collier than to Dade in 2000. In 1998 Collier and Monroe showed less Hispanic participation than Dade, especially in Collier where Hispanic turnout was less than a quarter of the rate observed in Dade. The rate of black participation in 2000 is about the same in all four counties.

(Table 12 goes here)

Collier and Monroe differ from Dade on more dimensions than turnout. Estimates of Republican support in the counties in four statewide contests in 1998 and 2000 show different party preferences for Dade County Hispanics (who are primarily Cuban) compared with non-Cuban Hispanics in other South Florida counties. The estimated support for Republican candidates among Dade County Hispanics, as reported in Table 13, was 83 - 97 percent. Collier Hispanics gave 7- 31 percent of their votes to Republican candidates. The estimates for the small Monroe Hispanic population show Republican candidates getting 0 to 89 percent of the votes.

(Table 13 goes here)

An examination of six statewide and legislative contests in Collier County in 2002 shows Latinos in that county to be far less supportive of Republicans than Cuban-Americans in Miami-Dade have been. In six contests examined in Table 14 - - Governor, Attorney General, Agriculture Commissioner, Congressional District 25 (a Hispanic-majority district), State Senate district 39 (a combined black-and-Hispanic majority district), and state house district 112 (a majority-Hispanic district) – only one Republican candidate commanded majority Hispanic support. Of three Hispanic Republicans running in the majority-minority districts, only Rivera, in state House 112 won the Hispanic vote in Collier, and his advantage over the Democrat, Gonzalez, is estimated to be less than four points.

(Table 14 goes here)

The other Section 5 county for which we have data with which to analyze racial voting preferences is Hillsborough (Tampa). Table 15 contains precinct-level estimates of the Anglo, black, and Hispanic vote for statewide, congressional, and state legislative contests in Hillsborough for 2002 and 2004. The analysis indicates that the Anglo vote in Hillsborough is generally reliably Republican up and down the ticket, and the black vote is regularly Democratic. Latinos usually vote Democratic, though Republican congressional incumbents and members of the Bush family are able to pull majority Hispanic support in Hillsborough. The most heavily-Hispanic state legislative district

twice elected a Democratic Hispanic over a Republican, Hispanic opponent, with overwhelming Hispanic support for the Democrat.

(Table15 goes here).

CONCLUSIONS

Estimates developed by the Census Bureau indicate that the rate at which voting age Latinos have registered to vote in Florida has increased slightly over the last quarter century. While the increase has been slight, the percent rate of age-eligible Latinos registered in Florida has exceeded that for Hispanics outside the South since 1986 with the exception of 1994. Official information on registrants provided by the Florida Secretary of State does not give a separate break out for Hispanics although we suspect that many of those in "Other" category are Latinos. From 1996 through 2004, the proportion of the registrants in the "other" category has grown from 7.2 to 11.6 percent of all registrants in the state.

The Census Bureau estimates for turnout indicate no consistent change in the share of the Latinos of voting age who have cast ballots in Florida. While the data in Table 2 do not show an increase in the rates of Latino participation in Florida, the figures do indicate higher rates of Latino voting in Florida than in the non-South since 1986 except for 1994.

The Census Bureau estimates of black registration do not show a consistent increase in the share of the African-American voting age population that has registered in Florida. Moreover the rate at which Florida African-Americans registered to vote continues to be lower than in the rest of the nation. However, the Florida Secretary of State shows the numbers of blacks registered to vote increasing by about 50 percent from 1996 to 2004 so that the share of all registrants who are African-American has grown from 10.5 to 11.9 percent.

Census Bureau turnout estimates continue to show African-Americans voting at much lower rates than do Anglos. From 1980 until 2004, there is no evidence of the disparity between the two races being closed. Moreover, African-Americans report voting at lower rates in Florida than in the non-South.

While turnout rates for Latinos and African-Americans continue to lag those for Anglos, minorities have made significant gains in terms of descriptive representation in Congress. Since 1993, the Florida congressional delegation has contained three African-Americans and after the 2001 redistricting, the delegation's number of Latinos grew from two to three. The 12 percent of the congressional seats filled by each minority group roughly approximates the group's share of the voting age population in the state.

Florida's African-Americans have even larger shares of the seats in the state legislature. In both chambers of the Florida legislature, African-Americans hold a larger percentage of the seats than their share of the voting age population.

In contrast, Latinos hold smaller shares of the seats in the Florida legislature than in the congressional delegation. Just over ten percent of the House membership is Latino while in the Senate Latinos constitute 7.5 percent of the membership. Both of these figures are less than the share of Florida's population that is Latino.

Both ethnic groups have made gains in the numbers of elected officials in the state. The most recent figure for Latino elected officials is little more than one third than for African-Americans holding office in Florida. For both ethnic groups, the bulk of the office holders serve at the municipal level.

It appears that part of the explanation for the greater success of African-Americans than Latinos in winning office is that in districts that contain substantial numbers of both ethnic groups, African-Americans are more likely to be elected. This is in part due to higher rates of registration and turnout among blacks than Latinos.

In the five counties covered by Section 5, the Latino population is either too small or too scattered to facilitate election of Hispanics. These two factors mean that it is typically impossible to draw a state legislative district, much less a congressional district in these counties in which the bulk of the population is Latino. The one exception comes in Collier County where many of the Latinos can be combined with an even larger Latino population in neighboring Dade County.

Estimates of voting preferences of Latinos in South Florida raise questions about the desirability of combining Dade Latinos with Collier or Monroe Latinos. The Latino population in Dade is heavily Cuban and provides strong support for Republicans. In Collier and other south Florida counties, the Latino electorate is more inclined to support Democrats. Thus while a district that straddles the Collier-Dade boundary is likely to elect a Latino and thus provide descriptive representation for that ethnic group, the winner may well not be the candidate of choice of the Latinos in Collier, the county that is covered by Section 5 of the Voting Rights Act.

TABLE 1: REPORTED REGISTRATION BY RACE IN FLORIDA AND OUTSIDE THE SOUTH, 1980-2004

	1980	1982	1984	1986	1988	1990	1992	1994	1996	199
FLORIDA										
Black	58.2	50.3	57.3	61.3	57.7	53.3	54.7	47.2	64.6	50.
White	64.1	60.8	64.1	59.9	64.3	59.5	64.5	57.6	67.8	61.
Latino	33.7	25.3	33.2	35.5	37.7	32.3	35	22.7	36.7	35.
Non-South										
Black	60.6	61.7	67.2	63.1	65.9	58.4	63	58.3	62	58.
White	69.3	66.7	70.5	66.2	68.5	64.4	70.9	65.6	68.1	63.
Latino	35.5	33.9	39	33.2	32.4	30.4	32.9	29.1	33.8	31.

Source: Various post-election reports by the U.S. Bureau of the Census.

TABLE 2

REPORTED TURNOUT BY RACE IN FLORIDA AND OUTSIDE THE SOUTH,

1980-2004

	1980	1982	1984	1986	1988	1990	1992	1994	1996	199
FLORIDA										
Black	50.3	30.4	43.2	42.4	40.8	37.4	46.3	30	40.5	33.
White	56.5	43.1	55.5	47.5	57.1	44.9	57.9	46.2	52.7	40.
Latino	29.3	18.6	29.1	28	34.1	22.8	30.5	20.1	29	22.
Non-South										
Black	52.8	48.5	58.9	44.2	55.6	38.4	53.8	40.2	51.4	40.
White	62.4	53.1	63	48.7	60.4	48.2	64.9	49.3	57.4	44.
Latino	29.8	25.8	32.8	23.8	26.8	20.5	27.4	20.8	26.3	21.

Source: Various post-election reports by the U.S. Bureau of the Census.

TABLE 3

RACIAL AND ETHNIC VOTER REGISTRATION FOR FLORIDA, 1994-2004

	Whites	Blacks	Other	Unknown	Total
1994*	5,845,494	614,384	99,720	0	6,559,598
1996*	6,565,941	845,179	583,862	82,895	8,077,877
1998*	6,586,453	865,974	655,259	112,580	8,220,266
2000	6,804,182	934,261	796,249	8,752,717	218,025
2002	7,044,287	1,027,817	924,825	9,302,360	305,431
2004	7,478,490	1,223,875	1,192,082	10,301,290	406,843

Source: Florida Department of State Divisions of Elections

TABLE 4

NUMBER OF LATINO ELECTED OFFICIALS
IN FLORIDA, 1984-2004

Year	Total	County	Municipal	School Board
1984	44	4	26	4
1986	48	1	26	4
1989	62	2	32	3
1991	60	2	31	2
1992	66	2	31	3
1999	83	9	42	5
2000	92	10	48	5
2002	89	----------72----------		
2004	91	----------72----------		

Source: Various volumes of *The National Directory of Latino Elected Officials* (Los Angeles: NALEO Educational Fund).

TABLE 5

NUMBER OF AFRICAN-AMERICAN ELECTED OFFICIALS IN FLORIDA 1960-2001

Year	Total	County	Municipal	School Board
1969	24	1	20	0
1970	36	1	30	2
1971	42	1	33	4
1972	51	1	45	2
1973	58	0	51	3
1974	73	1	65	3
1976	90	3	71	7
1977	91	3	70	9
1978	91	3	69	10
1980	109	2	85	12
1981	110	3	84	13
1984	131	5	92	12
1985	167	7	114	15
1987	179	14	117	15
1989	179	14	115	15
1991	184	14	113	15
1993	200	28	105	16
1995	----------*No Report from Joint Center for 1995*---------			
1997	216	25	121	15
1999	216	22	124	14
2001	243	29	134	16

Source: Various volumes of the *National Roster of Black Elected Officials* (Washington, D.C.: Joint Center for Political Studies.)

TABLE 6

FLORIDA CONGRESSIONAL DISTRICTS, BLACK AND LATINO POPULATION, AND SECTION 5 COVERAGE

	2000 Presidential Vote		% Black	% Latino	S.5
CD	BUSH%	GORE%	Origin	Origin	County?
1	**68.90%**	31.10%	14.00%	3.00%	
2	**52.70%**	47.30%	22.10%	3.30%	
3	34.90%	**65.10%**	**49.30%**	8.00%	
4	**65.80%**	34.20%	13.50%	4.20%	
5	**54.10%**	45.90%	4.50%	5.60%	
6	**58.20%**	41.80%	11.90%	5.20%	
7	**53.90%**	46.10%	8.80%	6.90%	
8	**53.70%**	46.30%	7.20%	17.60%	
9	**54.20%**	45.80%	3.50%	7.90%	**Hillsborough**
10	49.20%	**50.80%**	3.60%	4.40%	
11	39.00%	**61.00%**	27.40%	20.00%	**Hillsborough**
12	**54.80%**	45.20%	13.00%	12.00%	**Hillsborough**
13	**54.50%**	45.50%	4.40%	7.70%	**Hardee**
14	**61.40%**	38.60%	5.10%	9.00%	**Hendry**
15	**53.70%**	46.30%	7.30%	11.30%	
16	**53.10%**	46.90%	5.80%	10.10%	
17	15.20%	**84.80%**	**55.20%**	21.20%	
18	**56.80%**	43.20%	5.70%	**62.70%**	**Monroe**
19	27.20%	**72.80%**	6.10%	12.70%	
20	31.00%	**69.00%**	7.90%	20.60%	
21	**57.90%**	42.10%	6.50%	**69.70%**	
22	47.60%	**52.40%**	3.80%	10.70%	
23	20.20%	**79.80%**	**51.20%**	13.70%	
24	**53.40%**	46.60%	6.30%	9.80%	
25	**55.10%**	44.90%	10.00%	**62.40%**	**Collier, Monroe**

Source: Florida House Redistricting Committee, at http://www.floridaredistricting.org/

TABLE 7

NUMBER OF LATINO STATE LEGISLATORS
IN FLORIDA, 1985-2005

Year	Senate	House
1985	0 (0.0%)	4 (3.3%)
1987	1 (2.5%)	8 (6.7%)
1989	2 (5.0%)	8 (6.7%)
1991	3 (7.5%)	8 (6.7%)
1993	3 (7.5%)	10 (8.3%)
1995	3 (7.5%)	10 (8.3%)
1997	3 (7.5%)	10 (8.3%)
1999	3 (7.5%)	11 (9.2%)
2001	3 (7.5%)	11 (9.2%)
2003	3 (7.5%)	13 (10.8%)
2005	3 (7.5%)	13 (10.8%)

TABLE 8
AFRICAN-AMERICANS IN THE FLORIDA LEGISLATURE, 1967-2004

			Senate				House	
Year		Number		Percent		Number		Percent
1967		0		0		0		0
1969		0		0		1		0.833333
1971		0		0		2		1.666667
1973		0		0		3		2.5
1975		0		0		3		2.5
1977		0		0		3		2.5
1979		0		0		4		3.333333
1981		0		0		4		3.333333
1983		2		5		11		9.166667
1985		2		5		11		9.166667
1987		2		5		11		9.166667
1989		2		5		12		10
1991		2		5		14		11.66667
1993		5		12.5		14		11.66667
1995		5		12.5		12		10
1997		5		12.5		14		11.66667
1999		5		12.5		15		12.5
2001		6		15		16		13.33333
2003		7		17.5		17		14.16667
2005		7		17.5		17		14.16667

TABLE 9

HISPANIC POPULATION IN SECTION 5 COUNTIES

County	Hispanic Pop	Hisp. As % of County	% of all FL Hispanics
Hillsborough	198,227	18.0	6.8
Hardee	9,991	35.7	0.3
Hendry	15,112	39.6	0.5
Collier	58,149	19.6	2.0
Monroe	12,369	15.8	0.4
Total for Section 5 Counties	293,848		10.1
Dade	1,354,343	57.3	46.3
State	2,922,723	16.8	

Source: U.S. Census Data.

TABLE 10

HILLSBOROUGH COUNTY STATE HOUSE DISTRICTS, LATINO POPULATION, AND INCUMBENT PARTY, 2005

District	Latino VAP	Inc. party	Note
47	15.7	R	
55	8.4	D	50.1%BVAP
56	11.4	R	
57	12.6	R	
58	38.4	D	
59	13.6	D	52%BVAP
60	9.7	R	
61	7.4	R	
62	12.3	R	
63	8.9	R	
67	6.1	R	
68	5.4	R	

Source: Hillsborough County Supervisor of Elections, at http://www.votehillsborough.org/.

TABLE 11

STATEWIDE EXIT POLL DATA ON DEMOCRATIC CANDIDATE SUPPORT BY VOTER RACE OR ETHNICITY, FLORIDA, 1992-2004,

	Black	Latino	Anglo
2004 President	91.0	45.5	46.3
2004 US Senate	84.1	46.1	47.7
2004 US House	87.4	52.0	41.6
2000 President	93.2	48.4	39.8
1998 Senator	82.5	52.8	52.0
1998 Governor	78.9	40.0	38.6
1998 US House	85.7	50.0	33.1
1996 President	90.4	51.3	46.3
1994 US Senate	81.7	31.1	22.6
1994 Governor	94.6	33.3	44.9
1994 US House	98.4	24.1	36.4
1992 President	89.0	38.1	37.2
1992 US Senate	95.0	67.2	64.1
1992 US House	83.8	50.0	50.8

Source: For 1992-2000, various Voter News Service exit polls; for 2004, Election Day surveys.

TABLE 12

ESTIMATED TURNOUT, BY RACE AND ETHNICITY, 1998 AND 2000 ELECTIONS, BROWARD, COLLIER, DADE, AND MONROE COUNTIES

	Hispanic	Black	Anglo
2000			
Broward	53	60	67
Collier	31	62	76
Dade	74	64	75
Monroe	50	65	75
1998			
Broward	40	39	51
Collier	10	28	50
Dade	46	40	52
Monroe	39	16	51

Source: Dario V. Moreno and Kevin A. Hill. "Expert Report on South Florida's Congressional Districts 17, 18, 21, and 25." Submitted in *Martinez v. Bush*, 234 F. Supp. 2d 1275 (SD Fla. 2002).

TABLE 13

ESTIMATED REPUBLICAN CANDIDATE SUPPORT, BY RACE AND ETHNICITY, 1998 AND 2000 ELECTIONS, BROWARD, COLLIER, DADE, AND MONROE COUNTIES

	Hispanic	Black	Anglo
President 2000			
Broward	54	0	35
Collier	31	0	63
Dade	83	0	27
Monroe	0	0	57
Governor 1998			
Broward	31	1	39
Collier	7	0	66
Dade	97	0	32
Monroe	89	1	50
Senator 2000			
Broward	56	0	36
Collier	29	0	63
Dade	83	0	29
Monroe	0	0	57
Edu. Comm. 1998			
Broward	21	3	45
Collier	*	*	*
Dade	*	*	67
Monroe	0	0	74

Reliable estimate could not be derived.

TABLE 14

OLS ESTIMATES OF RACIAL AND ETHNIC PREFERENCES, STATEWIDE AND LEGISLATIVE GENERAL ELECTIONS, COLLIER COUNTY 2002

County/ Year	Candidate/Party	Anglo	Black	Hispanic
Congress, Dist 25	Diaz-Balart (H) R	58.7	<0	<0
	Betancourt R	41.3	>100	>100
Governor	Bush D	78.2	52.0	24.5
	McBride D	21.3	47.3	70.4
	Kunst	0.5	0.7	5.1
Attorney General	Crist R	68.7	44.2	34.1
	Dyer D	31.3	55.8	65.9
Agriculture Comm.	Bronson R	80.3	57.5	25.4
	Nelson D	19.7	42.5	74.6
State Senate 39	Marino (H) R	39.8	11.4	32.1
	Bullard (B) D	60.2	88.6	67.9
State House 112	Gonzalez (H) D	34.5	34.4	48.4
	Rivera (H) R	65.5	65.6	51.6

Source: Data compiled by authors.

TABLE 15

OLS ESTIMATES OF RACIAL AND ETHNIC PREFERENCES, STATEWIDE AND LEGISLATIVE GENERAL ELECTIONS, HILLSBOROUGH COUNTY 2002

Contest	Candidate/Party		Anglo	Black	Hispanic
Agriculture Comm.	Bronson	R	68.6	20.9	46.3
	Nelson	D	31.2	79.1	53.7
Attorney General	Crist	R	60.6	4.1	36.3
	Dyer	D	39.4	95.9	63.7
Governor	Bush	R	63.9	22.4	55.6
	McBride	D	36.1	77.6	44.4
Congress, Dist. 9	Bilirakis	R	77.3	<0	<0
	Kalogianis	D	22.7	>100	>100
State Senate 16	Sebest	R	76.9	>100	78.0
	McGinnis-Gimber	D	24.1	<0	22.0
State House 47	Ambler	R	44.5		17.8
	Steinberg	D	50		76.6
	Schwartzberg		5.5		5.6
State House 56	Murman	R	75.2	32.0	56.1
	Howard	D	24.8	68.0	43.9
State House 57	Culp	R	58.8		<0
	Farrell	D	39.1		<0
	Richmond		2.0		>100
State House 58	Vila	R	33.7	<0	<0
	Henriquez	D	66.3	>100	>100
State House 60	Homan	R	64.9		
	Romeo	D	32.3		
	Conley		2.8		
State House 63	Ross	R	80.9	99.0	21.5
	Downs	D	19.1	1.0	78.5
State House 67	Reagan	R	77.9	<0	57.6
	Stringfield	D	22.1	>100	42.4

Source: Data compiled by authors.

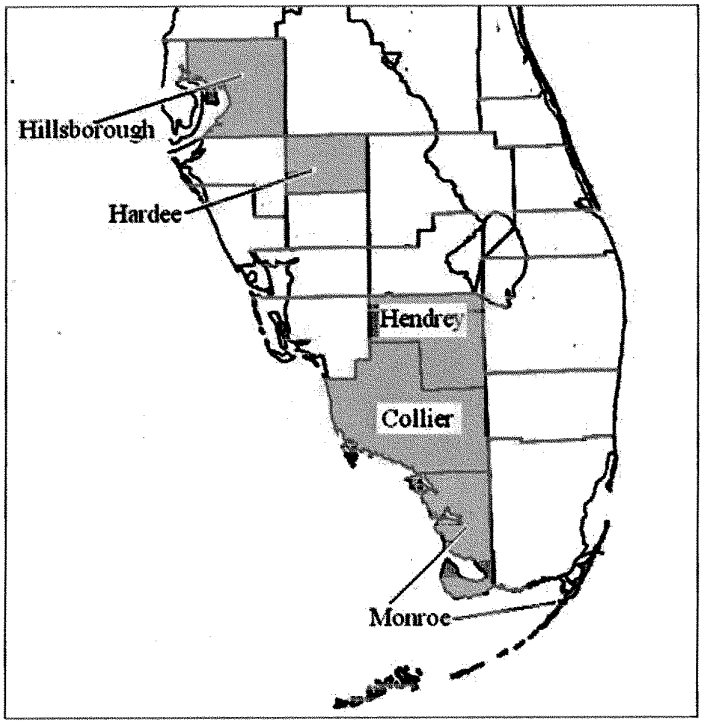
TABLE 15 (continued)

OLS ESTIMATES OF RACIAL AND ETHNIC PREFERENCES, STATEWIDE AND LEGISLATIVE GENERAL ELECTIONS, HILLSBOROUGH COUNTY 2004

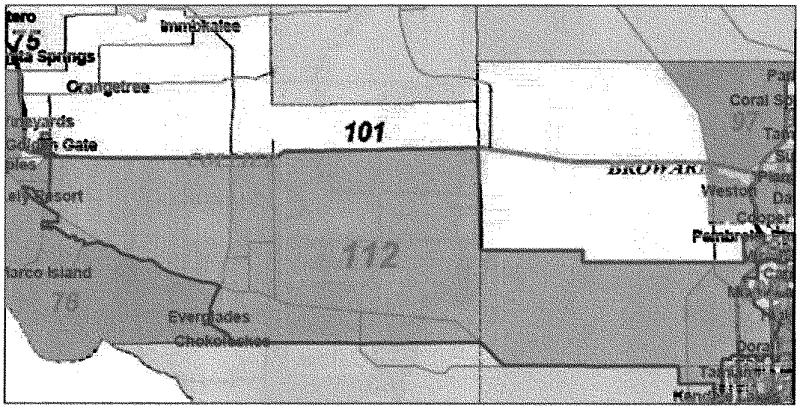
County/ Year	Contest/ Candidate/ Party	Anglo	Black	Hispanic
President	Bush R	66.6	6.6	30.8
	Kerry D	32.8	92.4	68.7
	Other	0.6	0.8	0.5
Congress, Dist. 11	Davis R	82.8	96.7	87.8
	Johnson D	17.2	3.3	12.2
Congress, Dist 12	Putnam-R	72.2	27.8	67.1
	Hagenmaier-D	27.8	71.2	32.9
State House 47	Ambler-R	64.6		50.6
	Snow-D	35.4		49.4
State House 57	Culp-R	83.6		<0
	Cope-D	16.4		>100
State House 58	Riis-R	56.4	<0	<0
	Henriquez-D	43.6	>100	>100
State House 60	Homan-R	76.6		39.0
	Perez-D	23.4		61.0

Source: Data compiled by authors.

MAP 1
FLORIDA COUNTIES COVERED BY SECTION 5 OF THE VOTING RIGHTS ACT



MAP 2
FLORIDA HOUSE DISTRICTS 101 AND 112, COLLIER, DADE, AND BROWARD COUNTIES



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An Assessment of Racially Polarized Voting in Milwaukee, Wisconsin

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RACIALLY-POLARIZED VOTING IN MILWAUKEE

The scope of racially polarized voting is not confined to the Section 5 states or to the South, but indeed occurs in places such as Wisconsin. During the 2002 federal trial to establish new state Assembly boundaries for the Badger State, the well-regarded University of Wisconsin political scientist David Canon entered testimony on behalf of plaintiffs arguing for the existence of racially polarized voting and significant differences in African-American versus Anglo participation in Milwaukee. The following data and analysis are drawn from Canon's reports and affidavits.

Canon's analysis focused on sixteen biracial elections within Milwaukee County. In fourteen of these contests, white turnout exceeded black turnout, often by double the rate of voter participation.

In his analysis, Canon found nine instances of "legally significant" racially polarized voting in black-versus-white contests: the 1992 Milwaukee County Executive primary, the 1992 House district 5 primary, the 1995 at-large school board primary, the 1996 Supreme Court primary, the 1996 Milwaukee Mayor's race

(General election), the 1998 gubernatorial primary, the 1999 at-large school board election, and the 2000 Supreme Court general election. Eight of these contests were primaries or non-partisan contests, and in those eight contests, the white turnout rate was on average double that of the black turnout rate.

The average black vote for the black candidate (86.2%) in the eight polarized, primary or nonpartisan contests was comparable to the average white vote for the white candidate (85.2%). These levels of polarization are comparable to levels observed in the most polarized southern elections, and exceed the degree of polarization in recent Georgia elections. Overall, in the nine instances of legally significant polarization identified by Canon, black voters cast at least 89% of votes for the black candidate on six occasions while white voters cast at least 89% for the white candidates on three occasions.

Dr. Canon exhibits an explicit concern that Republicans in Wisconsin would use districting to locate black voters in such a fashion that a Voting Rights Act violation might occur. In his criticism of State Assembly redistricting plans advanced by the Assembly and Senate Republicans in 2002, Canon observed that:

"the black majorities are too small in the Republican plans, black voters will not be able to elect their candidates of choice in as many as four of the six black-majority districts. The highly –polarized nature of voting in Milwaukee County and the relatively low turnout of African-American voters means that the combined minority voting age population should be at least 65% and the African-American voting age population should be at least 60% in order to ensure that minority voters have an opportunity to elect candidates of their choice . . . given the relative lack of responsiveness of the Republican Party to the particular needs of minority voters, see "Electing 'Candidates of Choice' and Effective Minority Representation in the 2002 Wisconsin State Legislative Districts," pp 27-30, the link between the creation of majority black districts and this partisan goal, and the dilution of black voting power by making it more difficult to elect minority candidates of choice, I believe that the State of Wisconsin would subjected to legal liability under a "totality of circumstances" test under Section 2 of the Voting Rights Act." (page 48-49)

Taken a step further, we should note that the Federal panel hearing this case sidestepped the issue by crafting a "best principles" map based on compactness and minimum population deviation. This map continued the five existing minority districts at relatively high percentages, and rejected an argument of "packing" of districts under the Democrat's proposed maps in Milwaukee. While the argument is sidestepped, and a generally Republican map resulted from the court's effort, they also implicitly accepted the logic of the Democrats by basically preserving the black districts of Milwaukee in a fashion consistent with the Democrat's expert recommendation.

Here, we see motive and opportunity, and we have expert analysis that demonstrates polarization akin to the South, and prescribing a remedy much more intensive than that used in many southern jurisdictions – Dr. Canon says that the 65% district is still necessary in Milwaukee, while the need for the district has passed in many southern jurisdictions covered by Section 5, as demonstrated by Professor Epstein.

Please also note that while Epstein's analysis was not accepted by the district court in Ashcroft, it was accepted by Justice O'Connor in her decision.

Reference: REBUTTAL/RESPONSE AFFIDAVIT OF DAVID T. CANON, Baumgart et al, v. Jensen & Panzer, (Sensenbrenner, et al, plaintiff intervenors), Eastern Federal District of Wisconsin, 01-C-121 (2002).

APPENDIX TO THE STATEMENT OF ANITA EARLS: SUPPLEMENT TO TESTIMONY

Supplement to Testimony prepared for U.S. House of Representatives
Committee on the Judiciary
Subcommittee on the Constitution
November 3, 2005

By
Anita S. Earls
Director of Advocacy, UNC Center for Civil Rights

On the Voting Rights Act: Section 5 of the Act – History, Scope, and Purpose
Hearing Date: Tuesday, October 25, 2005

I. More Information Letters

During the course of my testimony I referred to a study of cases in which the Department of Justice has requested that jurisdictions provide more information about a particular submission. Here are the details: The National Commission on the Voting Rights Act obtained information concerning all "more information" letters written by the Department of Justice from 1982 through the end of 2004 under the Freedom of Information Act. Those records revealed that during that period, 501 proposed changes affecting voting were withdrawn by jurisdictions after receipt of a "more information" letter. In these instances Section 5 review by the Department of Justice resulted in the abandonment of potential voting changes with discriminatory impact or purpose before an objection was issued.

II. Discrimination in Voting in North Carolina, 1995 – Present.

A. Section 5 Objections. Only 40 of North Carolina's 100 counties are covered by Section 5 of the Voting Rights Act. Since 1997 the Department of Justice has issued two objections to proposed changes affecting voting but this vastly underestimates the impact of the Section 5 review process on the ability of black voters to have an opportunity to participate in elections. These two objections are relevant to illustrate that polarized voting is still prevalent in the state and that left to their own devices, local jurisdictions are likely to dilute minority voting strength.

The most recent objection was issued in July of 2002 when Harnett County submitted a redistricting plan for the county school board and board of county commissioners with no majority-black districts. The county's population is 22.6% black and the voting age population is 20.7% black. In 1989 the county was required to implement single-member districts with one majority-black district as a result of a consent decree entered in *Porter v. Steward,* No. 89-950 (E.D. N.C.). The Justice Department's investigation determined that the county's proposed plan was retrogressive because the previously majority-black district was reduced by six percentage points from 52.7% black to 46.6% black in total population and that the plaintiffs in *Porter* provided the County during the redistricting process with two illustrative plans demonstrating that a more compact plan than the enacted plan could be drawn that would include a majority-black district. In addition, review of election returns demonstrated that voting patterns in the

county continued to be racially polarized. *See* Letter to Dwight W. Snow, Esq. from J. Michael Wiggins, Acting Assistant Attorney General dated July 23, 2002 (Copy attached, available at: http://www.usdoj.gov/crt/voting/sec_5/pdfs/l_072302.pdf.)

The earlier objection was issued in February 1997 finding that an at-large method of election with staggered terms for an Advisory Council for the Camp Butner Reservation, a newly created local governing entity. Thirty-three percent of the Reservation's 2,063 registered voters in 1996 were black, and the Department looked to other elections in the same county to determine that no black candidate had ever been elected to the at-large Granville County Commission or School Board, even though blacks were 43 percent of the county's total population and numerous black candidates had run for those offices. Both the county commission and the school board had been sued previously under Section 2 of the Voting Rights Act. The Department had evidence that voting in the county was racially polarized. Thus, they concluded that the proposed at-large election system for the Camp Butner Reservation violated Section 2 and Section 5 of the Voting Rights Act and that the jurisdiction failed to meet its burden to demonstrate that the proposed change had neither a discriminatory purpose nor a discriminatory effect. *See* Letter to Susan K. Nichols, Esq. from Isabelle Katz Pinzler, Acting Assistant Attorney General dated February 3, 1997 (Copy attached, available at: http://www.usdoj.gov/crt/voting/sec_5/ltr/l_020397.pdf.)

While these objections are instructive, as noted above, Section 5 review has a significant deterrent effect that is less obvious but very important.

B. Efforts to Dismantle Majority-Black Districts. There is a disturbing and mostly quiet counter-revolution underway among local jurisdictions in North Carolina to dismantle majority-black districts and return to at-large election methods, or alternative districting schemes that do not include majority-black districts. Recently a number of counties and one city who were previously sued under Section 2 of the Voting Rights Act to require them to abandon at-large systems have filed motions seeking to dissolve the consent decrees or court orders that currently bind them. In the case of *Montgomery County Branch of the NAACP v. Montgomery County,* No. C-90-27-R, (E.D.N.C.), the plaintiffs were able to oppose the motion sufficiently that the County backed down and negotiated a settlement with them. The Court's Supplemental Order, issued July 2, 2003, provides a new method of election that moves from an 4-1 system, with one commissioner elected at-large, to a 3-2 system that retains one majority black district, but has two at-large seats. The Order also provides that the case will be dismissed after five years, thereby dissolving any court order that there must be a majority black district for the board of county commissioners. Montgomery County is not covered by Section 5 of the Voting Rights Act.

A similar motion has now been filed to terminate the Consent Order in *NAACP v. City of Thomasville,* No. 4:86CV291 (M.D. N.C.). In two other counties, Beaufort County and Columbus County, efforts are underway to dismantle court orders requiring majority-black districts but no motions have been filed in court.

This is a disturbing development. Under Section 5, the Department of Justice has the power to prevent retrogression even where Federal Judges are ready to throw out voting rights remedies.

Without Section 5, there would be no other limit on jurisdictions that seek to eliminate majority black districts.

C. Out of Precinct Provisional Ballots in the 2004 Election. In February the State Supreme Court ruled that around 12,000 ballots cast on Election Day by voters outside their home precincts would not be counted. *James v. Bartlett,* No. 602P04-2, (N.C. February 4, 2005). The ballots under question were cast disproportionately by black voters. Statewide, the estimates are that 36% of the ballots cast out of precinct on election day were cast by black voters although they were just 18% of the electorate. In some counties the disparity was even greater. For example, 41% of Wake County's provisional ballots were cast by black voters. Many of these voters were never notified where to vote by the state, due to a backlog of new registrants. In addition, many voters were advised by local election officials that provisional ballots votes cast outside their home precincts would count. As Bob Hall from Democracy North Carolina notes, out-of-precinct voting "especially helps working class, young and minority voters. Our research shows that black voters cast more than one third of the state's out-of-precinct ballots, while less than one fifth of all votes in November's elections came from African-Americans." Black voters disproportionately live in low income neighborhoods without access to transportation or flexible work schedules that might allow them to get to their home precincts.[1] While this case was ultimately resolved by legislative action, Section 5 of the Voting Rights Act should be a bar to any change in voting rules that rejects a disproportionate number of ballots cast by black voters.

D. Election Protection Efforts in 2004. Election administration in this state continues to need improvement, particularly because polling place officials turn voters away without justification. Volunteer election protection workers in November, 2004 were able to intervene in numerous cases to rectify the situation, but many other incidents were not satisfactorily resolved on election day. Miscellaneous "dirty tricks", such as altering polling place registers to make it appear that black voters had already voted when they had not, and posting signs saying that voting would take place on Wednesday, November 5th, occurred in predominantly black precincts in various parts of the state.

In the Leadership Conference of Civil Right's February 2004 memo to the Department of Justice, Wake County and Scotland County in North Carolina were both mentioned as potential violators of voting rights standards. LCCR reported possible voter intimidation at Latino polling places and a concern that the Wake County Board of Elections would not inform Latino voters in the area of incomplete registration applications before the November elections. The Scotland County Board of Elections was in disputes with black activists because black voters were not being allowed to choose who could assist them at the polls on Election Day – another issue of potential voter intimidation.[2]

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[1] Bob Hall. "Voters Disenfranchised by N.C. Supreme Court." 11 Feb 2005
<http://minorjive.typepad.com/hungryblues/2005/02/voters_disenfra.html>

[2] Letter from Wade Henderson and Nancy Zirkin of LCCR to the Assistant Attorney General of the Civil Rights Division of the Department of Justice, 19 Oct 2004.
<http://www.civilrights.org/tools/printer_friendly.html?id+25718&print+true>

E. Representation of Minority Interests in the North Carolina State Legislature. Attached to this statement is an expert witness report prepared by Kerry L. Haynie, PhD earlier this year for submission in a redistricting challenge currently pending in state court in North Carolina. He reports on the findings of his research on the North Carolina state legislature with two significant findings. First, a majority of African-American legislators introduced legislation concerning black interests in the three years he studied, and that at least twice as many African-American legislators did so than non-black legislators. This has important implications demonstrating that descriptive representation does translate into substantive representation for black voters. Second, he found that controlling for all other possible explanations, the perceptions by other legislators and by lobbyists of black legislators effectiveness was determined by race. In other words, black legislators were consistently rated as less effective than their white counterparts by their colleagues and by lobbyists.

III. Discrimination in Voting in North Carolina, 1982 – 1994.

A. Discrimination Affecting Ability of Blacks to Participate in Voting and Electoral Politics. The pervasive and persistent refusal of white voters in North Carolina to vote for black candidates has consistently operated to deny black voters an equal opportunity to elect candidates of their choice. Richard Engstrom's 1995 study of 50 recent elections in North Carolina in which voters have been presented with a choice between African-American and white candidates, including elections for the U.S. House of Representatives, statewide elections to high profile and low profile offices, and state legislative elections in both single-member and multi-member districts, found that 49 of them were characterized by racially polarized voting.

Black candidates ran for Congress in North Carolina in four elections during the 1980's. None was able to obtain enough white votes to win a primary. In 1982, Mickey Michaux ran in the Second Congressional District and received 88.55% of the black vote in the primary and 91.48% of the black vote in the run-off. In contrast, his support among white voters actually dropped slightly in the runoff, from 13.88% in the primary to 13.12% in the runoff. Ken Spaulding and Howard Lee, who ran in the Second and Fourth Congressional Districts in 1984 also were the clear choice of black voters. They received slightly higher percentages of the white vote than Michaux had, but not enough to win the Democratic Party nomination.

Every statewide election since 1988 where voters were presented with a biracial field of candidates has been marked by racially polarized voting. In all except two low-profile contests, racially polarized voting was sufficient to defeat the candidate chosen by black voters. Of every biracial state legislative district election since 1988, only one was not marked by racially polarized voting. The one exception was a 1992 multi-seat election in which Mickey Michaux received more white votes than two white challengers from the Libertarian Party. The polarized voting found in *Thornburg v. Gingles* is not a phenomenon of the past; it remains prevalent in the state today. Racial bloc voting still persists throughout the state with sufficient force normally to prevent the candidate of choice of black voters from being elected in both local and statewide elections. The choices of black voters and the hopes of black candidates continue to be frustrated by persistent racially polarized voting.

Elections since *Gingles* have involved campaign tactics deliberately and demonstrably designed to keep African-Americans from voting. Most significantly, in 1990, just days before the general election in which Harvey Gantt, an African-American, was running against Jessie Helms for U.S. Senate, post cards headed "Voter Registration Bulletin" were mailed to 125,000 African-American voters throughout the state. The bulletin suggested, incorrectly, that they could not vote if they had moved within 30 days of the election, and threatened criminal prosecution. Consent Order in *U.S. v. North Carolina Republican Party*, No. 91-161-CIV-5F (E.D.N.C.) (February 27, 1992), Tt. 1011. The postcards were sent to black people who had lived at the same address for years. As a result of the postcard campaign, black voters were confused about whether or not they could vote and some went to their local board of election office to try to vote there. Considerable resources were devoted to trying to clear up the confusion.

The most notorious examples of racial appeals in campaigns also come from the Gantt-Helms contest in 1990. Television ads which distorted Harvey Gantt's picture and voice, and others which were specifically designed to encourage racial stereotypes and fears had a dramatic impact on the 5% to 6% of the electorate which the polls indicated had been 'undecided'. After the ads ran, polls showed that virtually all of the undecided voters voted for Jessie Helms.

The impact of racial appeals in North Carolina must be assessed in light of the local context. Specific polls conducted in the 1990 election report substantial white North Carolinians who said they would simply not vote for a black candidate. The state has a large population of limited education which is more likely to utilize cues in their voting choices. There is a substantial mistrust across racial lines in North Carolina. A focus group study of the ads in the Gantt-Helms campaign showed how this series of ads effectively primed voters to react with negative racial characterizations. Moreover, the impact of these ads was explicitly given as a reason for supporting the decision to draw two majority black congressional districts in the State Senate debate prior to passage of the plan.

There are other examples of explicit racial appeals in political messages of the early 1990's at the state and local levels. An anonymous leaflet warned Columbus County voters in 1990 that blacks in the county have too much political power and "more Negroes will vote in this election than ever before". The overall effect of such racial appeals has been to diminish seriously the opportunities of black citizens for an equal exercise of their political rights. Racially polarized voting, campaign tactics designed to keep black voters from going to the polls, and racial appeals designed to encourage voting on the basis of racial stereotypes are all current features of political life in North Carolina.

B. Present Effects of Past Discrimination Affecting the Ability of Black Voters to Participate Effectively in the Political Process. Current forms of racial discrimination in matters affecting voting are all the more effective because of the long history of official and purposeful discrimination which ended in some cases less than twenty years ago. The "White Supremacy Campaign" of 1898 which swept North Carolina Congressman George W. White from office, the last southern black congressman before the passage of the Voting Rights Act, also resulted in the passage of a state constitutional amendment imposing a literacy test and poll tax requirement for the right to vote, with a "grandfather clause" allowing illiterate white men to vote. The explicit purpose of the amendment was to disenfranchise black citizens in defiance of

the Fourteenth and Fifteenth Amendments to the United States Constitution.[3] These measures, along with violence and threats of violence, effectively decimated the ranks of black voters in the state. Only 15% of the state's blacks were registered to vote in 1948, and only 36% in 1962.

After passage of the Voting Rights Act, the percentage of eligible blacks registered to vote passed 50% for the first time since 1900. However, use of the literacy test continued until the early 1970's[4]. In 1970 only 52.2% of the black voting age population was registered to vote. In 1980, only 51.3% of age-qualified blacks were registered, whereas that same year 70.1% of the age-qualified whites were registered. By 1993, the gap between white and black registration rates statewide had closed to slightly over ten percent, with 61.3% of the black voting age population registered, and 72.5% of the white voting age population registered.

As black voter registration increased, other official forms of discrimination were enacted, including numbered seat requirements, anti-single shot provisions, and at-large and multi-member districts. *See Gingles v. Edmisten*, 590 F. Supp. 345, 359-64 (E.D.N.C. 1984); Keech & Sistrom, *North Carolina,* in Quiet Revolution in the South 162 (C. Davidson & B. Grofman eds., 1994). The purpose and effect of these provisions was to prevent black voters from being able to elect their candidates to state and local offices. While Tennessee elected its first black of the century to the General Assembly in 1964 and abolished multi-member districts in urban counties in 1965 because they discriminated against black voters, North Carolina did not elect a black state legislator until 1968, and it refused at that time to abolish multimember districts for the state legislature. In 1967 the North Carolina General Assembly passed a numbered seat system, subsequently declared unconstitutional because it denied equal protection to black voters.[5] *See, Dunston v. Scott*, 336 F. Supp. 206 (E.D.N.C. 1972). Multimember state legislative seats in areas where they diluted the votes of black voters were not eliminated until this Court's decision in *Thornburg v. Gingles,* 478 U.S. 30 (1986).

The direct effect of these racially discriminatory provisions was that at the time the North Carolina General Assembly was considering the plan at issue here, African-Americans were still not being elected to political office in the state in numbers even remotely approaching their representation in the general population, despite the fact that capable and experienced African-American candidates were running for election. As of January 1989, African-Americans were 21% of the state's voting age population but only 8.1% of the elected officials.

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[3]Proponents of the amendment promised that of the 120,000 negro voters in the state, it would disenfranchise 110,000 of them.

[4]Although literacy tests were finally discontinued in the early 1970's, the purpose for, and experience of, being required to write a sentence from the Constitution is remembered by many older black voters. Special voter registrars from Charlotte to Gatesville continue to encounter African-Americans who are reluctant to register for a variety of reasons. Over the past seven years, a special registrar in Charlotte has met potential voters who still express the belief that they could not register if they were unable to read or write.

[5]The same legislature that adopted the multimember districts and numbered seat system also refused to add Durham County to the Second Congressional District because it would allow too great a black voter influence in that district.

In the state House of Representatives, which has 120 members, the number of African-American legislators grew from three in 1981 to fourteen at the time of redistricting in 1991. After the 1992 redistricting, eighteen blacks served in the House, seventeen of whom were elected from single-member majority black districts. One was elected from a multi-member majority white district which allows for single-shot voting. On the Senate side, with fifty members, one African-American was serving at the time of the 1981 redistricting, and five were serving in 1991. After the 1992 redistricting plans were enacted, seven blacks were elected to the Senate, five of whom won in majority-black single-member districts, and two of whom won in multi-member majority-white districts. Three majority-black single-member districts elected white representatives, two in the Senate and one in the House. **No single-member majority-white district elected a black candidate to the state legislature.**

At the local level, in 1989, of 529 county commissioners throughout the state, 36 were black. Most of the African-Americans holding local offices were elected as a result of lawsuits or negotiated settlements changing the method of election from an at-large system to single member districts. Keech & Sistrom, *supra*, at 171-72 & 178-79. At the time the challenged plan was passed by the General Assembly, no candidate who was the choice of the black community had ever won election to a statewide non-judicial office since 1900. No African-American had been elected to Congress from North Carolina during the same period. Although candidates of choice of the state's African-American voters were elected to public office from single-member districts where black voters were in the majority, the relative percentages of black elected officials in North Carolina in the early 1990's had actually not increased over those present in 1984 when the district court in *Gingles* considered this factor as relevant to the totality of circumstances inquiry in a vote dilution claim. *Compare Gingles v. Edmisten*, 590 F. Supp. at 365 (Blacks hold 9% of city council seats, 7.3% of county commission seats; 4% of sheriff's offices, 9.2% of the state House; 4% of the state Senate) *with* D. I. Stips. 76-80 (in 1989 Blacks held 8.1% of all elected offices; 8.8% of the state legislative seats; 6.9% of county commission seats; 4% of sheriff's offices). *See also*, 42 U.S.C. § 1973(b) ("The extent to which members of a protected class have been elected to office in the State or political subdivision is one circumstance which may be considered.")

The political participation of African-American voters in North Carolina is further impeded by the fact that they continue to suffer from a disproportionately low position on virtually every measure of socio-economic status. There is a significant history of official discrimination in education, housing, employment and health services in North Carolina which has resulted in blacks as a group having less access to transportation and health care and being less well-educated, less-well housed, lower-paid, and more likely to be in poverty than their white counterparts.[6]

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[6]For example, in 1989, 27.1% of African-Americans in North Carolina had incomes below the poverty level, while 8.6% of whites did. The average per capita income for whites was nearly twice that of blacks. Roughly three-quarters of the state's whites were high school graduates, while slightly over half the state's blacks had a high school education. Nearly a quarter of black households had no car available, while only six percent of white households were careless. Fifteen percent of black households had no phone, while only four percent of white households were without a telephone. Lacking financial resources, transportation and easy communication makes supporting an effective political campaign much more difficult.

These disparities make it more difficult for black citizens to register, vote, and elect candidates of their choice. For example, black citizens who are illiterate or semi-literate have been intimidated by the voting process because of their limited abilities. Many low-wage and hourly workers have limited access to transportation and cannot afford, or are not given, the time off to vote. Black citizens are hindered in their ability to field candidates and to participate effectively in the political process by their lower financial status, lower educational attainment, lack of employment security and lack of physical resources.

As noted by the *Gingles* court, lower socio-economic status both hinders blacks' ability to participate effectively in the political process and gives rise to special group interests. *Thornburg v. Gingles*, 478 U.S. 30, 39 (1986). Evidence at the trial of this case established that black residents of North Carolina have distinctive group interests and face unique problems that are addressed at the federal policy level and require effective representation in Congress. These include housing, access to credit, education of economically disadvantaged youth, unemployment, community economic development, neighborhood redevelopment, the unique concerns of historically black colleges and universities, discrimination in housing and employment, and civil rights.

Prior to the election of an African-American to Congress from North Carolina in 1992, North Carolina's congressmen demonstrated a lack of responsiveness to the particularized needs of their black constituents. In Guilford County, African American organizations regularly contacted their previous, white Congressman concerning civil rights measures and famine aid to Africa, with little success. Robert Albright, a past President of Johnson C. Smith University, an historically black institution in Charlotte, found little support for educational and community development efforts from his previous white congressman, even though the congressman served on the University's Board of Visitors. Black residents in many parts of the state found their pre-Chapter 7 Congressmen unresponsive to the particularized needs of their black constituents.

This anecdotal evidence is supported by the findings of Dr. Kousser's study of congressional roll call behavior which shows that today there is a difference in the effectiveness of representation of African-American interests by those elected by African-American voters as compared with those elected from districts in which African American voters are not in the majority.

The data reported by Dr. Kousser indicate that before 1993, even in the most heavily African-American plurality districts, voting patterns of North Carolina congressmembers on conservative roll call voting indices demonstrate diminished responsiveness to African- American concerns. The numbers show, for example, that throughout the 1970's and 80's, congressmembers elected from heavily African-American districts 1 and 2 consistently scored between 60% and 80% on conservative voting indices. In contrast, Representatives Watt and Clayton score 11% on these indices.

A review of national and North Carolina public opinion surveys indicates that there is marked divergence in the beliefs and opinions of blacks and whites, particularly in their beliefs about the degree of discrimination in American society and their beliefs about the causes of inequality, perceptions that influence the political programs that people favor. In the absence of majority

black districts, congressmembers lack the leeway to represent consistently and effectively the particular interests of their African-American constituents.

C. Racial Discrimination in Prior Congressional Redistricting. The history of discrimination against African-Americans in congressional redistricting in North Carolina goes back to 1872, when the state legislature intentionally packed black voters into the "Black Second". The Black Second effectively confined black voters' control, in a state that was approximately one-third African-American, to a maximum of one district in nine. The shape of the Black Second was described by Republican Governor Todd Caldwell as "extraordinary, inconvenient and most grotesque." Anderson, Eric, Race and Politics in North Carolina, 1872-1901: The Black Second, 3 (1981).

More recently, legislators took special pains in 1965-66 and 1981-82 to dilute black voting strength in order to diminish the political leverage of black voters and the political prospects of potential black candidates. In both instances, the issue was where to place the large and politically active black population in Durham County so that black voters would not have too much influence in the district. In 1965 the solution to the "problem" was to place Durham County in the Fifth District rather than create a district in the triangle (Raleigh-Durham-Chapel Hill) that might have elected a congressman responsive to black political interests. In 1981, the solution passed by the legislature was "Fountain's Fishhook", a strangely shaped district that curved around Durham to exclude it from L. H. Fountain's second district. The Justice Department denied that plan preclearance on the grounds that the plan had the purpose and effect of diluting minority voting strength.

Following the Justice Department's rejection, and in the face of a legal challenge on vote dilution grounds, the legislature redrew the plan to include Durham in the Second District, and simultaneously shift other black populations, notably Northampton County, one of the state's majority-black counties, out of the Second. The Justice Department precleared the second plan because it was approximately 40% black in total population.

As a result of this new Second district, great hope was generated that African-Americans finally had an opportunity to elect an candidate of their choice. There had been two earlier campaigns by African-American candidates for congress. In 1968, Eva Clayton was the first African-American to run for Congress since 1898. When she began her campaign, blacks constituted only 11% of the registered voters, though they comprised 40% of the Second District's population. The political climate was hostile and discouraging for black voters and candidates. Prior to 1968 several lawsuits had been brought in, in the Second district to protest overt barriers to black voter registration. Mrs. Clayton's candidacy was not taken seriously by the media or by political observers. Very few white voters were willing to be openly associated with her campaign. Although she was defeated, Eva Clayton's campaign resulted in increased levels of black voter registration in the district.

In 1972, after Orange County was added to the Second District, Howard Lee announced his bid for the Democratic party's nomination. Elected Mayor of the majority-white town of Chapel Hill in 1969, and re-elected in 1971, he was the first black mayor in the state during the twentieth century. He had been named vice-chairman of the state Democratic party in 1970. Lee worked

to establish relationships with the white community, and also expected to increase the registration of black voters in the district. His defeat in the primary was generally believed to be a result of voting along racial lines.

Following the 1981 redistricting, serious campaigns were mounted by Mickey Michaux and Kenneth Spaulding in the Second Congressional District, in 1982 and 1984 respectively. Both the Michaux and Spaulding campaigns were serious, strong, well-financed efforts of experienced, well-known candidates with broad support across the district. Despite employing careful and well considered strategies to appeal to voters of both races, neither candidate was able to obtain the Democratic party nomination because of racially polarized voting and the use of racial appeals in the campaigns. Subsequently, potential African-American candidates logically concluded that the expenditure of effort, time and money to run a congressional campaign was not feasible in the light of continued racially polarized voting and the strong perception that they could not win.

D. 1991 Congressional Redistricting Process. With the 1990 reapportionment and the increase of North Carolina's congressional delegation from eleven to twelve members came the opportunity to redress past wrongs and correct the effects of current discrimination. Members of the 1991 North Carolina General Assembly had lived through, and been active participants in, the history of electoral politics discussed above. Well over half had been in the General Assembly in 1986 when they were required by the *Gingles* litigation to create eight majority-minority districts; and fifty-eight had been members of the 1981 General Assembly which elected to redraw the congressional redistricting plan following the Justice Departments' refusal to preclear the first plan. In legislative floor debates, and in subsequent testimony, legislators explained their familiarity with the history of discrimination.

Representative David Flaherty said: "When my father served in the legislature 20 years ago, there was only, I think, one black, maybe two and only a couple of Republicans."

Senator Ralph Hunt stated that he was a product of, and participant in, a separate-but-equal school system:

> We are talking about books handed down after the black schools placed their orders for new books. Those from the white schools were sent to the black schools, the used ones, and the new order were sent to the white schools. The desks were the same way. ... And of course, our educational system was administered as it was then simply because there were not black people in the process to have input and be aware and take care of the interests of black people at that time.

Senator Kincaid stated:

> I don't think I've mentioned this on the floor of this Senate before, but back in 1967, when I was a high school teacher, I had the opportunity to teach the first integrated class in Caldwell County. And I saw firsthand how inferior the black schools were at that time.

Senator Walker, after explaining the experience with racial appeals in the Gantt/Helms campaign, stated:

> So, I just want to say I support this bill because I think so far as the blacks are concerned that yes, they deserve two black districts. After going through a 1990 race, they can see we still need to make some improvements in how our relationships are between our people.

IV. Implications of Redistricting Law Today in North Carolina.

Following enactment of the state legislative redistricting plan in 2001, a lawsuit was filed in state court seeking to enforce a provision of the State Constitution that previously had been found to be in conflict with the Voting Rights Act, namely the "whole county provision" which requires legislative districts to be made up, to the extent possibly, by whole counties. *Stephenson v. Bartlett,* 355 N.C. 354, 562 S.E.2d 377 (2002) (*Stephenson I*) and *Stephenson v. Bartlett,* 358 N.C. 219, 595 S.E.2d 112 (2004), (*Stephenson II*). As a result, the only counties that can be divided in drawing legislative districts are those covered by the non-retrogression requirement of Section 5 of the Voting Rights Act, or where there is potentially a Section 2 violation. Dividing counties is generally necessary to draw majority-black districts.

Last year the Fourth Circuit, in *Hall v. Virginia,* 385 F.3d 421 (4th Cir. 2004), held that in order to show a potential violation of Section 2 of the Voting Rights Act, plaintiffs must demonstrate that they constitute 50% or more in a single-member district, foreclosing the possibility of influence or coalition district claims. If Section 5 is not reauthorized, application of the whole county provision may result in the loss of eleven of the state's twenty-one districts that elect an African-American to the North Carolina General Assembly.

RACE AND THE REPRESENTATION OF BLACK INTERESTS IN STATE LEGISLATURES

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RACE AND THE REPRESENTATION OF BLACK INTERESTS IN STATE LEGISLATURES[1]

After the passage of the 1965 Voting Rights Act, African American politics was transformed from pressure or protest politics to the politics of electoral participation. This new black politics served as the impetus for African Americans to compete for and win public office. For example, the dramatic increase in the number of African Americans elected to public office between 1970 and 2001 was one of the most notable developments in American politics in all of the 20th Century. The increase was particularly dramatic in state legislatures. According to the Joint Center for Economic and Political Studies, the number of black state legislators elected during these three decades increased from 168 to 584.[2] The new black politics, however, was not simply a struggle to be included. Inclusion was intended to be a means towards many substantive ends rather than merely a symbolic end unto itself. Scholars and activists alike expected there to be a noticeable link between the descriptive presence of African Americans in elected office and the substantive representation of black interests. In fact, some scholars even speculated that such a link might be necessary if African Americans were to have their interests adequately represented. For example, in 1975, Professor Charles Bullock, a long-time student of black politics observed:

> While [African American] political participation may elicit concessions from white officeholders, they may respond racially when white and black interests conflict...Moreover, even well-meaning white politicians may be unable to compre-

[1] The analyses provided in this report rely heavily on research and analyses from two of my previously published works: Bratton, Kathlene A., and Kerry L. Haynie. 1999. "Agenda Setting and Legislative Success in State Legislatures: The Effects of Gender and Race," *Journal of Politics* vol. 61, pp.658-79; Haynie, Kerry L. 2001. *African American Legislators in the American States*. New York: Columbia University Press.

[2] Joint Center for Political and Economic Studies. 2001. *Black Elected Officials*. Washington, D.C.: Joint Center for Political and Economic Studies.

> hend some black needs and therefore fail to introduce them into the policy making arena. Consequently, adequate representation of black demands... requires that there be black office-holders to translate these demands into policy.[3]

Thus historically, African American legislators have been expected to change not only how legislatures look, but also what they produce. The emergence and growth of African American representation in legislatures has raised considerable expectations that African American lawmakers would address issues of particular importance to African American citizens, whose interests may not have been adequately addressed in these institutions before there was a significant black presence. In other words, there has been the widespread expectation and hope that African Americans serving in policy-making institutions would provide substantive representation for African American citizens in ways that other representatives have not.

Is there indeed a link between the descriptive presence of African Americans in elected office and the substantive representation of black interests? Based on my own original research on race and representation in 6 state legislatures, my unequivocal conclusion is that there is. Below I describe and summarize the findings from two of my scholarly studies.[4]

What Are Black Interests?

Most estimates of a group's interests involve both objective and subjective elements. Measurable socio-economic phenomena like unemployment, poverty rates, income, and educational levels are often used as "objective" indicators of a group's

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[3] Bullock, Charles. 1975. "The Election of Blacks in the South: Preconditions and Consequences," *American Journal of Political Science* vol. 19, p.727.

[4] Bratton, Kathlene A., and Kerry L. Haynie. 1999. "Agenda Setting and Legislative Success in State Legislatures: The Effects of Gender and Race," *Journal of Politics* vol. 61, pp.658-79; Haynie, Kerry L. 2001. *African American Legislators in the American States*. New York: Columbia University Press.

interest.[5] Subjective interests are less observable and more difficult to evaluate because they involve the feelings, emotions, and temperaments of the individuals or group in question. Surveys and public opinion polls, however, provide useful tools for identifying the subjective interests of groups.

Determining *black interests* may be a much simpler task than defining the interests of other groups. Notwithstanding the fact that they are not monolithic in their attitudes, beliefs, and values; a shared culture, the legacy of slavery, and the historical significance of race in the United States provide African Americans with many common political interests and goals. In fact, on questions of public policy, ideology, and candidate choice, African Americans have been the most cohesive and consistent political sub-group in U.S. politics.[6] Using objective and subjective components, I offer a definition of "black interests" that reflects how both researchers and African American citizens have commonly perceived them. A variety of socio-economic and public opinion data sources depict an African American community that is in general economically and socially disadvantaged relative to other groups.[7] Thus it is reasonable to posit that improving their economic and social conditions is in the interests of African Americans. To this end, *black interest* can be defined as support for social welfare, economic redistributive, and civil rights legislation. Specifically, laws that prohibit discrimination

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[5] Sargent, Jocelyn. 1991. "Black Interests and Representation." Paper presented at the annual meeting of the American Political Science Association, Washington, D.C.; Swain, Carol M. 1993. *Black Faces, Black Interests: The Representation of African Americans in Congress.* Cambridge: Harvard University Press.; Whitby, Kenneth. 1987. *The Color of Representation: Congressional Behavior and Black Interests.* Ann Arbor: University of Michigan Press.

[6] See for example, Dawson, Michael. 1994. *Behind The Mule: Race and Class in African American Politics*. Princeton: Princeton University Pres.; Gurin, Patricia, *et al.* 1989. *Hope and Independence: Blacks' Response to Electoral and Party Politics*. New York: Russell Sage Foundation; Lewis, J.A., and William Schneider. 1983. "Black Voting, Block Voting, and the Democrats," *Public Opinion* vol. 6, pp. 12-15; and Tate, Katherine. 1993. *From Protest to Politics: The New Black Voters in American Elections*. Cambridge: Harvard university Press.

[7] See Haynie 2001, pp. 19-24 for a detailed discussion of objective and subjective indicators of black interests.

in voting, housing, education, and unemployment; and laws that support unemployment compensation, jobs programs, food stamps, and educational assistance are considered to be black interests.

Black Interests Advocacy

Who promotes black interests in state legislatures? This is one of the primary questions that I address in both a 2001 book, *African American Legislators in the American States*, and a1999 journal article, "Agenda Setting and Legislative Success in State Legislatures: The Effects of Gender and Race." In these studies, bill introductions from the 1969, 1979, and 1989 legislative sessions of the lower house of the Arkansas, California, Illinois, Maryland, New Jersey, and North Carolina legislatures provide the data for several analyses.[8] Bill introductions are important to examine because, unlike roll-call votes, they detail what representatives actually add to the policy agenda. Getting items on legislative agendas for serious debate is a prerequisite for getting them enacted. Moreover, bill introductions can serve as a thermometer for gauging the intensity of a legislator's commitments to particular interests.

Using the various state legislative journals, all of the bill introduced in these states during the three legislative sessions were coded and categorized based on their substantive content.[9] Many bills were placed into more than one category. For example, a bill to provide for the increased desegregation of a state university system was coded as

[8] Data from California is not used in the analyses contained in the book.

[9] Only "substantive" bill introductions are used in these analyses. Substantive bills are proposals for new laws or programs. Nonbinding resolutions or memorials are not counted as bill introductions in this study. For New Jersey, bills introduced in 1978 and 1988 are included rather than bills introduced in 1979 and 1989. Legislative elections were held in 1977 and 1987, and the following years were the ones in which newly elected representatives could reasonably be expected to have some impact in the legislature.

both an education and civil rights issue. Any bill that, in the judgment of the author, hindered the social, political, or economic progress of African Americans was excluded from all categories. Although bills could have multiple sponsors only primary sponsors are included as introducers.

Based on the definition of black interests given above, the primary focus is on bill introductions in five broad categories: education, health care, poverty/social welfare, civil rights, and children's issues. The education bills category includes all proposals that regulate, finance, or improve a state's system of public schools, and laws that pertain to the administering of colleges and universities. Legislation involving scholarships and student financial aid programs are also included in this category. Healthcare bills includes a variety of bills relating to the physical and mental welfare of citizens, as well as public health issues like contagious disease control, occupational illnesses, and environment-related health hazards. In the social welfare category are proposals that are intended to alleviate poverty. It includes measures that provide monetary subsidies and programmatic services like jobs training, food stamps, low-income housing, and medical assistance to the poor or otherwise disadvantaged. Minimum wage legislation is also included in the social welfare category. Civil Rights legislation are laws that expressly prohibit discrimination on account of race, gender, ethnicity, religion, age, disability, national origin, or sexual orientation. Finally, among children's issues are bills that provide child and youth services (e.g. recreation, jobs programs, etc.), and laws that seek to protect minors from various forms of abuse.

Table 1, contains data that compares black interest bill introduction activity by African American and non-black legislators. In each of the three legislative sessions, a

majority (from 55 to 82%) of African American representatives introduced black interest legislation. Moreover, in all three years, at least twice as many African Americans than non-black legislators introduced black interests legislation.

TABLE 1: Comparison of Black Interest Bill Introductions by Race

	% of African Americans who Introduce a Black Interest Bill	% of Whites who Introduce a Black Interest Bill
1969	82%	39%
1979	55%	7%
1989	82%	22%
Total	74%	23%

Source: Bratton, Kathleen A. and Kerry L. Haynie (1999).
Note: As used in this table, black interest bills include introductions in children's, civil rights, education, health care, poverty/social welfare, and women's issues. The percentages are based on data pooled from each of the five states.

In Table 2, I compare African American and other legislators in terms of the percentage of their total number of bill introductions that was devoted to black interest legislation. This data is reported by state and year. In all but one of the legislative sessions (New Jersey 1969), the proportion of bills that African American legislators dedicated to black interest issues was greater than that of non-black representatives. The differences are statistically significant in thirteen of the fifteen legislative sessions.

In terms of the magnitude of these differences, the North Carolina legislature stands out from the others. In all three sessions studied, the percentage of their bill introductions that black legislators in North Carolina devoted to black interest legislation was at least twice the percentage of their non-black peers, and the difference in percentages between the two groups was more than 26 points in each session.

Furthermore, in two of the legislative sessions black interest bills made up significantly less than 20% of all the bills introduced by the non-black representatives. It seems clear that in North Carolina, it is the black legislators who shoulder most of the weight of representing black interests.

TABLE 2: Black Interest Bill Introductions as a Percentage of All Bill Introductions

	Proposed By		
State/Year	Blacks	Non-Blacks	Difference
Arkansas			
1979	20.8	19.5	1.3
1989	39.4	23.5	15.9*
Illinois			
1969	27.5	9.1	18.4*
1979	30.8	17.4	13.4*
1989	39.6	9.8	29.8*
Maryland			
1969	46.6	18.5	28.1*
1979	28.6	25.3	3.3
1989	37.7	29.2	8.5*
New Jersey			
1969	14.8	16.1	-1.3
1979	31.6	18.1	13.5*
1989	37.9	23.9	14.0*
North Carolina			
1969	**40.0**	**13.1**	**26.9***
1979	**75.0**	**16.9**	**58.1***
1989	**53.1**	**26.3**	**26.8***

*Black-white difference significant at the .01 level.

The data in tables 1 and 2 clearly show that African American state legislators are the primary advocates for black interests. In each of the sampled states and years, unlike

non-black legislators, a majority of African American representatives introduced at least one piece of black interest legislation. Perhaps more important is the fact that, when a black interests bill is introduced, it is at least twice as likely to be introduced by an African American legislator than by a non-black one. And, African American legislators tend to devote a greater proportion of their introductions to black interest issues than other representatives.

Is It Race That Explains The Difference?

The finding that African American legislators tend to disproportionately introduce black interest legislation gives rise to an interesting an important question: *Are these differences in agenda-setting behavior in any way attributable to legislators' race?* That is, *is there a statistically significant correlation between the descriptive presence of African Americans in the legislature and the substantive representation of black interests?*

I use regression analysis is to assess what effects, if any, race has on bill introductions. The unit of analysis is the individual legislator and the dependent variable is the number of bills introduced in a particular category in a given year and state. Because the dependent variable is an event count, using negative binomial regression is in order.[10] In addition to the *race* of the legislator, *gender, party affiliation,* and *seniority* are also included as explanatory variables. Democrats and women tend to have more liberal attitudes than Republicans and men towards social and economic policy and government spending in general, and therefore party affiliation and gender might influence the substantive content of a legislator's bill introductions. Because seniority is a

[10] See King, Gary.1989. *Unifying Political Methodology*. New York: Cambridge University Press.

likely contributor to expertise in certain policy areas, and because more senior legislators are more likely to have greater skill at navigating the legislative labyrinth, I include *seniority* as a potential explanatory variable. Seniority is measured as the number of consecutive years in the legislature.

Because districts with high percentages of blacks may be more likely to elect a representative who will be supportive of black interests regardless of their race, I control for the racial composition of the district, measured as the *percentage black in the district logged*. There is also a control for *whether or not the district is majority black.*[11]

Given the distinctive set of socioeconomic problems that disproportionately affect urban areas (e.g. high unemployment, concentrated pockets of poverty, higher rates of HIV/AIDS, etc.), legislators from urban districts might be inclined to introduce legislation related to these policy areas regardless of their race. Thus *urbanness* is included as an explanatory variable.[12] Recognizing that predominantly African American districts in urban areas might be different from mostly white urban districts and predominantly black districts in rural areas, I also control for the interaction between urbanness and the percentage black in the district.

Standing committees are the principal organizational units in legislatures. Not only do they have disproportionate power over the policy areas in their respective jurisdictions, committees also have significant influence over the entire legislative

[11] The majority black district variable is a dichotomous variable; coded 1 if the district is majority black and 0 otherwise.
[12] Relying on Herring (1990), the population of the largest city in the district logged is used to measure urbanness.

process.[13] Because of the central role that committees play, I include *membership on relevant committees* as an additional explanatory variable.

Results and Discussion

On the question of whether there is a connection between a descriptive presence of African Americans in legislatures and the substantive representation of black interests, the regression results in Table 3 demonstrate that the answer is an unequivocal yes. These data show that the race of the representative has a powerful and statistically significant effect on the introduction of traditional civil rights legislation. That is, African Americans, all else being equal, were significantly more likely than non-black legislators to introduce bills that prohibited racial discrimination in education, employment, and housing; and laws that expressly advanced the socio-economic well-being of African Americans. Furthermore, *race* was a significant factor for the introduction of bills in two of the other four black interests categories-- education and social welfare policy. In both cases, the regression coefficient for race was the largest in terms of magnitude of effect.

[13] See for example, Fenno, Richard. 1973. *Congressmen in Committees*. Boston: Little Brown; and Francis, Wayne. 1989. *The Legislative Committee Game: A Comparative Analysis of Fifty States*. Columbus: Ohio State University Press.

Table 3: Effects of Race on Bill Introductions

	Parameter Estimates (Standard Errors in Parentheses)					
Independent Variable	Black Interests	Women's Interests	Education Policy	Health Care	Children's Policy	Welfare Policy
Intercept	-3.82**	-3.21**	1.44**	-.474**	-2.50**	-1.19**
	(.53)	(.34)	(.22)	(.18)	(.27)	(.33)
Race	**2.06****	**.66****	**.28***	**-.08**	**.09**	**.39***
	(.21)	**(.22)**	**(.15)**	**(.14)**	**(.20)**	**(.18)**
Gender	.45*	1.51**	.18**	.31**	.53**	.32**
	(.21)	(.12)	(.08)	(.08)	(.11)	(.13)
Black Woman	-.86*	-.62*	-.24	-.13	.14	-.08
	(.52)	(.35)	(.23)	(.30)	(.31)	(.29)
Republican	-.71**	.13	-.05	-.11*	-.19*	-.36**
	(.14)	(.09)	(.05)	(.05)	(.01)	(.08)
Seniority	.01	-.01	.02**	.01**	-.02**	.01
	(.01)	(.01)	(.00)	(.00)	(.01)	(.01)
%Black in District (logged)	**.07***	**.08****	**-.00**	**.02**	**.00**	**.04**
	(.04)	**(.03)**	**(.02)**	**(.12)**	**(.03)**	**(.03)**
Majority Black District	**.65**	**.22**	**-.11**	**-.09**	**-.41**	**.18**
	(.47)	**(.40)**	**(.18)**	**(.23)**	**(.37)**	**(.33)**

Size of Largest City (logged)	.15** (.05)	.08** (.03)	-.06** (.02)	.05** (.01)	.11** (.02)	-.07** (.02)
Largest City *and* Majority-Black District	-.41 (.49)	-.24 (.45)	-.00 (.22)	.18 (.24)	.14 (.38)	.28 (.37)
Membership on Relevant Committee	.20 (.13)	.19** (.08)	.75** (.05)	.56** (.05)	.21** (.08)	.43** (.09)
Number of Other Bills Introduced	.02** (.00)	.02** (.00)	.02** (.00)	.02** (.00)	.02** (.00)	.01** (.00)
(Table 3 contd.)						
Arkansas	.01 (.25)	-.27 (.18)	-.35** (.09)	-.65** (.11)	-.23 (.15)	-.66** (.19)
California	-.48* (.25)	.52** (.17)	.25** (.09)	.04 (.09)	.55** (.15)	.69** (.14)
Illinois	-.16 (.22)	.37** (.15)	.09 (.08)	-.32** (.09)	-.05 (.14)	.10 (.13)
Maryland	-1.2** (.26)	.64** (.146)	-.30 (.08)	-.18* (.09)	.58** (.14)	.04 (.13)
North Carolina	.55** (.25)	-.29* (.17)	-.11 (.09)	-.41** (.09)	.03 (.15)	-1.0** (.17)
1979	-1.1** (.18)	.55** (.11)	-.80** (.06)	.22** (.06)	.13 (.09)	-.43** (.09)

1989	-.18 (.17)	.74** (.11)	-.35** (.06)	.50** (.06)	.95** (.09)	-.02 (.09)
Total Number of Bills	284	733	3028	3715	1179	1159

Dependent Variable = number of bills a legislator introduced in a category. Number of cases = 2023
**$p \leq .01$ *(one tailed test)*
*$p \leq .05$ *(one tailed test)*

Gender, membership on relevant committees and party affiliation, are other personal characteristics that influenced whether or not a legislator introduced black interests bills. Women and Democrats were more likely than men and Republicans to propose such legislation. It is interesting and important to note that, different from the findings of two previous highly regarded studies which relied predominantly on roll-call vote analysis to investigate the effects of race on the representation of black interests,[14] the results here show that, when agenda-setting behavior (i.e. bill introductions) is examined, a legislator's race tends to have a stronger effect on the substantive representation of black citizens than does a legislator's party membership.

The data in Table 3 also indicate that districts with a majority black population had no significant impact on whether legislators representing such districts introduced black interest legislation. Moreover, everything else being equal, the percentage black in a legislative district had a significant positive effect on bill introductions in only one of the five categories of black interests legislation, civil rights issues.

Given that traditional civil rights issues have historically been and remain among the most prominent black interest areas, it is noteworthy that the presence of African Americans in legislative districts seems to influence the bill introduction behavior of representatives on these matters. Today, however, as we move further into the twenty-first century, education, health, and social welfare issues are arguably just as important, if not more so, for the well-being and advancement of African Americans. In fact, one could argue that most traditional civil rights challenges like voting rights, fair and equal access to housing and public accommodations, and anti-discrimination legislation have

[14] Swain 1993; Whitby 1997.

for the most part been met. The percentage black in the district had no significant impact on the propensity of a representative to place bills in these other important black interest areas on the legislative and policy agendas. In these instances, the race of legislators appears to be a more important factor in black interest representation than the racial makeup of legislative districts. This suggests that there is indeed a connection between how legislatures look-- descriptive representation, and what they produce-- substantive representation.

Table 4 includes regression results for the North Carolina General Assembly only. As was the case with five state sample, these data show that in the North Carolina legislature, the race of the representative had a powerful and statistically significant effect on the introduction of black interest legislation. All else other than race being equal, African American legislators in North Carolina were significantly more likely than their non-black colleagues to introduce black interest legislation. Also in North Carolina, districts with a majority black population had no significant impact on whether legislators representing such districts introduced black interest legislation. Thus in general, the regression results for North Carolina mirror those generated by the multi-state analysis. That is, in North Carolina, as was the case with the multi-state sample, the race of legislators appears to be an important factor in black interest articulation and representation within the legislature.

Table 4: Effects of Race on Black Interest Bill Introductions in the North Carolina House 1969, 1979, 1989

Parameter Estimates

Independent Variables	*(Standard Errors in Parentheses)*
Intercept	-2.4**
Race	**2.2****
Party	-0.7*
Gender	0.7*
Seniority	0.0
%Black in District (logged)	**0.2**
Majority Black District	**0.1**
Size of Largest City (logged)	0.1
Membership on Civil Rights Committee	-0.1
# Bills Introduced	0.0*
1979	-2.5**
1989	-1.3**
N	*359*

Dependent Variable = the number of black interest bills introduced, pooled for 1969, 1979, and 1989.
***p≤ .01 (one tailed test)*
**p≤ .05 (one tailed test)*

Summary and Observations

Based on the results of my research discussed above, when it comes to substantive representation, I believe that we can say, with some significant degree of certainty, that when African Americans are present in the legislature, they are more likely to pursue black interests than their non-black counterparts. In light of this finding, the speculation by Charles Bullock (1975) that I included at the beginning of this analysis merits repeating. Bullock suggested that it is possible that," ...well-meaning white politicians may be unable to comprehend some black needs and therefore fail to introduce them into the policy making arena. Consequently, adequate representation of black demands... require that there be black officeholders to translate these demands into policy".[15]

[15] Bullock 1975, p. 727.

Because assessing the motives of white legislators is beyond the scope of my analyses, I am not in a position to comment on their intentions relative to black interests. However, consistent with Bullock's conjecture, the evidence here indicates that there is an important link between descriptive and substantive representation. The race of the representative is linked to the kind of responsiveness African American citizens get from legislative institutions. This finding of a powerful and significant connection between descriptive and substantive representation is particularly noteworthy in light of the mounting theoretical, legal, and political challenges to the creation of majority-minority or minority-influence legislative districts-- the type of districts from which most African American legislators are elected.

Miller v. Johnson (1995) and *Bush v. Vera* (1996), are just two examples of relatively recent United States Supreme Court decisions that exemplify the political and legal challenges to majority-minority districts. The Court ruled in *Miller* that states could consider race in redistricting decisions, but race could not be the "predominant factor." In *Bush*, the Supreme Court reaffirmed its decision in *Miller* by finding three majority-minority districts in Texas to be unconstitutional because race was the predominant factor used in drawing the district boundaries. Supreme Court decisions such as these are likely to lead to a decrease, or at the very least, stagnation in the number of African Americans elected to legislatures. If this is indeed the outcome, given my findings above, a likely consequence will be less substantive representation of black interests in important political institutions like state legislatures.

In her landmark 1993 book, *Black Faces Black Interests: The Representation of African Americans in Congress,* Carol Swain provides one of the most compelling

theoretical challenges to the purposeful drawing of districts specifically designed to elect a racial or ethnic minority. She argues that the presence of African Americans is not a prerequisite for the adequate (i.e. substantive) representation of black interests. Comparing the roll-call behavior of African American members of the 100th Congress to white members who represent significant numbers of black constituents, Swain concludes, "...descriptive representation of blacks guarantees only black faces and is, at best, an intangible good; substantive representation is by definition real and color blind... Many white members of Congress perform as well or better on the indicators used in this book than some black representatives."[16] To this she adds:

> What difference does the race of the representative make for the representation of black policy preferences? If the mean interest-group scores of white and black Democrats on two of the indicators of black interests are contrasted, there is only a shade of difference between white and black Democrats... Similarly, in a multivariate regression analysis that includes the race of the representative as one of the independent variables, race is statistically insignificant (212).

These conclusions are clearly challenged by the data and analyses presented in my research. With regards to agenda-setting, an extremely important legislative function, I find that there is indeed a connection between the presence of African Americans in legislatures and the substantive representation of black interests. The data and analyses here show that black state legislators are the primary advocates for black interests Moreover, these analyses indicate that for the substantive representation of African American interests, a legislator's race matters above and beyond the effects of constituency characteristics and political party membership. In other words, black faces in legislatures do matter for black interest representation. Thus while super-majority-

[16] Swain, p.211.

black legislative districts in and of themselves may not be necessary to achieve substantive representation of black interests, they are significant because African American representatives are significantly more likely to be elected from such districts. Majority black districts, or districts in which black voters have a fair opportunity to elect black legislators or candidates of their choice, are indeed important for the substantive representation of black interests.

Several relatively recent studies on race and representation in the U.S. Congress have reached conclusions about the link between descriptive and substantive representation that are consistent with the ones reached here. For example, Kenny Whitby, in his book, *The Color Of Representation: Congressional Behavior and Black Interest*, finds that the race of the representative indeed matters and is a significant predictor of responsiveness to black interests, and that race is an important factor even when controlling for the strong impact of party and region.[17]

> The findings presented here have potentially important political consequences. There is more to the election of African Americans than symbolism or the color of skin. *The color of Congress has implications for the quality of substantive representation for African Americans.* The high level of support among black law-makers is unmatched by any other cohort in the assembly.[18]

Similarly David Canon's book, *Race, Redistricting, and Representation: The Unintended Consequences of Black Majority Districts*, finds that African American legislators have distinctive representational styles that matter. Canon concludes that,

> ...African American members of the House *are* more attentive to the distinctive needs of the black constituents than are their white counter-parts who represent substantial numbers of blacks...*The race of the representative has important implications for the type of representation that is provided to a district with a significant*

[17] Whitby 1997, p 109.
[18] Ibid., p.112. Emphasis added.

> *number* of black constituents. Black members do a better job walking the racial tightrope and balancing the distinctive needs of black voters and the general interests of all voters, black and white alike. White members tend to have a more exclusive focus on non-racial issues.[19]

The findings of these two books and those from my analyses have important implications for legislative redistricting and for the procedures that we use to choose our elected representatives. If it is in fact true that African American representatives are the primary and most important advocates and supporters of black interests, then it is essential that efforts are undertaken to increase, enhance and sustain African American representation in state legislatures, as well as in other policy-making arenas. Failure to do so runs the risk of not only once again excluding African Americans from a physical and descriptive presence in American political institutions, it is likely to diminish substantive governmental responsiveness to their concerns as well.

[19] Canon 1999, 244-245. Italics in the original. Also see Cameron, Charles *et al.* 1996. "Do Majority-Minority Districts Maximize Substantive Black representation in Congress?" *American Political Science Review* 90: 794-812.

Overview of Current Racial Discrimination in Voting in North Carolina

Testimony prepared for the National Commission on the Voting Rights Act
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I. Introduction

I have seventeen years' experience in the field of voting rights. I began representing plaintiffs in Section 2 Voting Rights cases in North Carolina in 1988. From April 1998 to August 2000 I was a Deputy Assistant Attorney General in the Civil Rights Division of the United States Department of Justice where I had oversight responsibility for the Voting Section, among others. For three years I was the Voting Rights Project Director for the Lawyers' Committee for Civil Rights Under Law. Today I work on a variety of voting rights issues in North Carolina.

In this testimony I will report on current discrimination in voting in North Carolina, from 1995 to the present. I then will review some of the discriminatory practices and incidents in this state from 1982 to 1994. The third part of this statement will explain the unique circumstances in North Carolina that create serious implications for the future of majority-minority districts should Section 5 of the Voting Rights Act not be reauthorized. Finally, I will briefly address the importance of Section 5 and Section 203 to the work of the Justice Department in protecting minority voting rights.

II. Discrimination in Voting in North Carolina, 1995 – Present.

A. Section 5 Objections. Only 40 of North Carolina's 100 counties are covered by Section 5 of the Voting Rights Act. Since 1997 the Department of Justice has issued two objections to proposed changes affecting voting but this vastly underestimates the impact of the Section 5 review process on the ability of black voters to have an opportunity to participate in elections. These two objections are relevant to illustrate that polarized voting is still prevalent in the state and that left to their own devices, local jurisdictions are likely to dilute minority voting strength.

The most recent objection was issued in July of 2002 when Harnett County submitted a redistricting plan for the county school board and board of county commissioners with no majority-black districts. The county's population is 22.6% black and the voting age population is 20.7% black. In 1989 the county was required to implement single-member districts with one majority-black district as a result of a consent decree entered in *Porter v. Steward,* No. 89-950

(E.D. N.C.). The Justice Department's investigation determined that the county's proposed plan was retrogressive because the previously majority-black district was reduced by six percentage points from 52.7% black to 46.6% black in total population and that the plaintiffs in *Porter* provided the County during the redistricting process with two illustrative plans demonstrating that a more compact plan than the enacted plan could be drawn that would include a majority-black district. In addition, review of election returns demonstrated that voting patterns in the county continued to be racially polarized. *See* Letter to Dwight W. Snow, Esq. from J. Michael Wiggins, Acting Assistant Attorney General dated July 23, 2002 (Copy attached, available at: http://www.usdoj.gov/crt/voting/sec_5/pdfs/l_072302.pdf.)

The earlier objection was issued in February 1997 finding that an at-large method of election with staggered terms for an Advisory Council for the Camp Butner Reservation, a newly created local governing entity. Thirty-three percent of the Reservation's 2,063 registered voters in 1996 were black, and the Department looked to other elections in the same county to determine that no black candidate had ever been elected to the at-large Granville County Commission or School Board, even though blacks were 43 percent of the county's total population and numerous black candidates had run for those offices. Both the county commission and the school board had been sued previously under Section 2 of the Voting Rights Act. The Department had evidence that voting in the county was racially polarized. Thus, they concluded that the proposed at-large election system for the Camp Butner Reservation violated Section 2 and Section 5 of the Voting Rights Act and that the jurisdiction failed to meet its burden to demonstrate that the proposed change had neither a discriminatory purpose nor a discriminatory effect. *See* Letter to Susan K. Nichols, Esq. from Isabelle Katz Pinzler, Acting Assistant Attorney General dated February 3, 1997 (Copy attached, available at: http://www.usdoj.gov/crt/voting/sec_5/ltr/l_020397.pdf.)

While these objections are instructive, it is important to note that Section 5 review has a significant deterrent effect that is less obvious but very important. For example, in the mid-1990's a traditionally African-American community in North Carolina called "Battleboro" was eager to be a part of the economic growth occurring around the city of Rocky Mount. Predominantly white neighborhoods to the west of Battleboro were being annexed by the City, but the City's leaders refused to annex Battleboro. Annexation would bring municipal services to the residents of Battleboro as well as give them a vote in local elections. Knowing that their taxes would also increase, the residents were still convinced that their future as a community depended on being a part of the City. They did not want to be left behind while areas around them experienced economic growth and the benefits of being part of the municipality.

At the time, Rocky Mount was a majority-white city, although the differential rates of population growth were apparent. City planners projected that by the 2000 Census, Rocky Mount would be a majority-black city. Annexing Battleboro would only increase this trend. But the city was also annexing white residential areas at the time. Rocky Mount straddles Edgecombe and Nash Counties, both of which are covered jurisdictions under Section 5 of the Voting Rights Act, hence, any changes affecting voting in the City of Rocky Mount must be submitted for preclearance.

Residents of Battleboro organized and lobbied the Mayor and City Council members to annex them. One of the key factors that led the city to agree to annex this community was the fact that

community members were prepared to vigorously protest any future annexations of white neighborhoods in the Section 5 preclearance process. The City would face fierce opposition to other development plans if they refused to incorporate the black community. Sustained community pressure, with legal representation, ultimately led the City to back down and agree to annex Battleboro. Today the residents enjoy municipal services, the right to vote in city elections, rising property values and a higher standard of living because of their incorporation into the City of Rocky Mount. As of the 2000 Census, Rocky Mount's population was 56% African-American.

Knowing that any changes affecting voting will receive Justice Department scrutiny, state lawmakers and to a lesser extent, local decision-makers in the covered counties are generally more careful to avoid the most blatant forms of discrimination. More importantly, the retrogression standard and preclearance requirement can be a bargaining chip that minority voters can use to assert their right to equal treatment.

B. Efforts to Dismantle Majority-Black Districts. There is a disturbing and mostly quiet counter-revolution underway among local jurisdictions in North Carolina to dismantle majority-black districts and return to at-large election methods, or alternative districting schemes that do not include majority-black districts. Recently a number of counties and one city who were previously sued under Section 2 of the Voting Rights Act to require them to abandon at-large systems have filed motions seeking to dissolve the consent decrees or court orders that currently bind them. In the case of *Montgomery County Branch of the NAACP v. Montgomery County,* No. C-90-27-R, (E.D.N.C.), the plaintiffs were able to oppose the motion sufficiently that the County backed down and negotiated a settlement with them. The Court's Supplemental Order, issued July 2, 2003, provides a new method of election that moves from an 4-1 system, with one commissioner elected at-large, to a 3-2 system that retains one majority black district, but has two at-large seats. The Order also provides that the case will be dismissed after five years, thereby dissolving any court order that there must be a majority black district for the board of county commissioners. Montgomery County is not covered by Section 5 of the Voting Rights Act.

A similar motion has now been filed to terminate the Consent Order in *NAACP v. City of Thomasville,* No. 4:86CV291 (M.D. N.C.). In two other counties efforts are underway to dismantle court orders requiring majority-black districts but no motions have been filed in court. Both of those counties, Beaufort County and Columbus County, are covered by Section 5 of the Voting Rights Act.

This is a disturbing development. Under Section 5, the Department of Justice has the power to prevent retrogression even where Federal Judges are ready to throw out voting rights remedies. Without Section 5, there would be no other limit on jurisdictions that seek to eliminate majority black districts.

C. Out of Precinct Provisional Ballots in the 2004 Election. In February the State Supreme Court ruled that around 12,000 ballots cast on Election Day by voters outside their home precincts would not be counted. *James v. Bartlett,* No. 602P04-2, (N.C. February 4, 2005). The ballots under question were cast disproportionately by black voters. Statewide, the estimates

are that 36% of the ballots cast out of precinct on election day were cast by black voters although they were just 18% of the electorate. In some counties the disparity was even greater. For example, 41% of Wake County's provisional ballots were cast by black voters. Many of these voters were never notified where to vote by the state, due to a backlog of new registrants. In addition, many voters were advised by local election officials that provisional ballots votes cast outside their home precincts would count. As Bob Hall from Democracy North Carolina notes, out-of-precinct voting "especially helps working class, young and minority voters. Our research shows that black voters cast more than one third of the state's out-of-precinct ballots, while less than one fifth of all votes in November's elections came from African-Americans." Black voters disproportionately live in low income neighborhoods without access to transportation or flexible work schedules that might allow them to get to their home precincts.[1]

The case is still pending before the Wake County Superior Court, and the General Assembly passed a law attempting to nullify the effect of the Supreme Court's February 4th opinion. However, Section 5 of the Voting Rights Act should be a bar to any change in voting rules that rejects a disproportionate number of ballots cast by black voters.

D. Election Protection Efforts in 2004. Attached to this statement is a preliminary draft report detailing the types of problems that occurred in North Carolina during the November, 2004 election. Election administration in this state continues to need improvements, particularly because polling place officials turn voters away without justification. Election protection workers were able to intervene in numerous cases to rectify the situation, but many other incidents were not satisfactorily resolved on election day. Miscellaneous "dirty tricks", such as altering polling place registers to make it appear that black voters had already voted when they had not, and posting signs saying that voting would take place on Wednesday, November 5th, occurred in predominantly black precincts in various parts of the state.

In the Leadership Conference of Civil Right's February 2004 memo to the Department of Justice, Wake County and Scotland County in North Carolina were both mentioned as potential violators of voting rights standards. LCCR reported possible voter intimidation at Latino polling places and a concern that the Wake County Board of Elections would not inform Latino voters in the area of incomplete registration applications before the November elections. The Scotland County Board of Elections was in disputes with black activists because black voters were not being allowed to choose who could assist them at the polls on Election Day – another issue of potential voter intimidation.[2]

E. Discrimination in the North Carolina State Legislature. Attached to this statement is an expert witness report prepared by Kerry L. Haynie, PhD earlier this year for submission in a redistricting challenge currently pending in state court. His deposition in the case is also attached. He reports on the findings of research he did of the North Carolina state legislature with two significant findings. First, a majority of African-American legislators

[1] Bob Hall. "Voters Disenfranchised by N.C. Supreme Court." 11 Feb 2005 <http://minorjive.typepad.com/hungryblues/2005/02/voters_disenfra.html>

[2] Letter drafted by Wade Henderson and Nancy Zirkin of LCCR for Assistant Attorney General of the Civil Rights Division of DOJ, 19 Oct 2004. <http://www.civilrights.org/tools/printer_friendly.html?id+25718&print+true>

introduced legislation concerning black interests in the three years he studied, and that at least twice as many African-American legislators did so than non-black legislators. This has important implications demonstrating that descriptive representation does translate into substantive representation for black voters. Second, he found that controlling for all other possible explanations, the perceptions by other legislators and by lobbyists of black legislators effectiveness was determined by race. In other words, black legislators were consistently rated as less effective than their white counterparts by their colleagues and by lobbyists.

III. Discrimination in Voting, 1982 – 1994.

A. Discrimination Affecting Ability of Blacks to Participate in Voting and Electoral Politics. The pervasive and persistent refusal of white voters in North Carolina to vote for black candidates has consistently operated to deny black voters an equal opportunity to elect candidates of their choice. Richard Engstrom's 1995 study of 50 recent elections in North Carolina in which voters have been presented with a choice between African-American and white candidates, including elections for the U.S. House of Representatives, statewide elections to high profile and low profile offices, and state legislative elections in both single-member and multi-member districts, found that 49 of them were characterized by racially polarized voting.

Black candidates ran for Congress in North Carolina in four elections during the 1980's. None was able to obtain enough white votes to win a primary. In 1982, Mickey Michaux ran in the Second Congressional District and received 88.55% of the black vote in the primary and 91.48% of the black vote in the run-off. In contrast, his support among white voters actually dropped slightly in the runoff, from 13.88% in the primary to 13.12% in the runoff. Ken Spaulding and Howard Lee, who ran in the Second and Fourth Congressional Districts in 1984 also were the clear choice of black voters. They received slightly higher percentages of the white vote than Michaux had, but not enough to win the Democratic Party nomination.

Every statewide election since 1988 where voters were presented with a biracial field of candidates has been marked by racially polarized voting. In all except two low-profile contests, racially polarized voting was sufficient to defeat the candidate chosen by black voters. Of every biracial state legislative district election since 1988, only one was not marked by racially polarized voting. The one exception was a 1992 multi-seat election in which Mickey Michaux received more white votes than two white challengers from the Libertarian Party. The polarized voting found in *Thornburg v. Gingles* is not a phenomenon of the past; it remains prevalent in the state today. Racial bloc voting still persists throughout the state with sufficient force normally to prevent the candidate of choice of black voters from being elected in both local and statewide elections. The choices of black voters and the hopes of black candidates continue to be frustrated by persistent racially polarized voting.

Elections since *Gingles* have involved campaign tactics deliberately and demonstrably designed to keep African-Americans from voting. Most significantly, in 1990, just days before the general election in which Harvey Gantt, an African-American, was running against Jessie Helms for U.S. Senate, post cards headed "Voter Registration Bulletin" were mailed to 125,000 African-American voters throughout the state. The bulletin suggested, incorrectly, that they could not

vote if they had moved within 30 days of the election, and threatened criminal prosecution. Consent Order in *U.S. v. North Carolina Republican Party*, No. 91-161-CIV-5F (E.D.N.C.) (February 27, 1992), Tt. 1011. The postcards were sent to black people who had lived at the same address for years. As a result of the postcard campaign, black voters were confused about whether or not they could vote and some went to their local board of election office to try to vote there. Considerable resources were devoted to trying to clear up the confusion.

The most notorious examples of racial appeals in campaigns also come from the Gantt-Helms contest in 1990. Television ads which distorted Harvey Gantt's picture and voice, and others which were specifically designed to encourage racial stereotypes and fears had a dramatic impact on the 5% to 6% of the electorate which the polls indicated had been 'undecided'. After the ads ran, polls showed that virtually all of the undecided voters voted for Jessie Helms.

The impact of racial appeals in North Carolina must be assessed in light of the local context. Specific polls conducted in the 1990 election report substantial white North Carolinians who said they would simply not vote for a black candidate. The state has a large population of limited education which is more likely to utilize cues in their voting choices. There is a substantial mistrust across racial lines in North Carolina. A focus group study of the ads in the Gantt-Helms campaign showed how this series of ads effectively primed voters to react with negative racial characterizations. Moreover, the impact of these ads was explicitly given as a reason for supporting the decision to draw two majority black congressional districts in the State Senate debate prior to passage of the plan.

There are other examples of explicit racial appeals in political messages of the early 1990's at the state and local levels. An anonymous leaflet warned Columbus County voters in 1990 that blacks in the county have too much political power and "more Negroes will vote in this election than ever before". The overall effect of such racial appeals has been to diminish seriously the opportunities of black citizens for an equal exercise of their political rights. Racially polarized voting, campaign tactics designed to keep black voters from going to the polls, and racial appeals designed to encourage voting on the basis of racial stereotypes are all current features of political life in North Carolina.

B. Present Effects of Past Discrimination Affecting the Ability of Black Voters to Participate Effectively in the Political Process. Current forms of racial discrimination in matters affecting voting are all the more effective because of the long history of official and purposeful discrimination which ended in some cases less than twenty years ago. The "White Supremacy Campaign" of 1898 which swept North Carolina Congressman George W. White from office, the last southern black congressman before the passage of the Voting Rights Act, also resulted in the passage of a state constitutional amendment imposing a literacy test and poll tax requirement for the right to vote, with a "grandfather clause" allowing illiterate white men to vote. The explicit purpose of the amendment was to disenfranchise black citizens in defiance of the Fourteenth and Fifteenth Amendments to the United States Constitution.[3] These measures, along with violence and threats of violence, effectively decimated the ranks of black voters in the state. Only 15% of the state's blacks were registered to vote in 1948, and only 36% in 1962.

[3]Proponents of the amendment promised that of the 120,000 negro voters in the state, it would disenfranchise 110,000 of them.

After passage of the Voting Rights Act, the percentage of eligible blacks registered to vote passed 50% for the first time since 1900. However, use of the literacy test continued until the early 1970's[4]. In 1970 only 52.2% of the black voting age population was registered to vote. In 1980, only 51.3% of age-qualified blacks were registered, whereas that same year 70.1% of the age-qualified whites were registered. By 1993, the gap between white and black registration rates statewide had closed to slightly over ten percent, with 61.3% of the black voting age population registered, and 72.5% of the white voting age population registered.

As black voter registration increased, other official forms of discrimination were enacted, including numbered seat requirements, anti-single shot provisions, and at-large and multi-member districts. *See Gingles v. Edmisten*, 590 F. Supp. 345, 359-64 (E.D.N.C. 1984); Keech & Sistrom, *North Carolina,* in Quiet Revolution in the South 162 (C. Davidson & B. Grofman eds., 1994). The purpose and effect of these provisions was to prevent black voters from being able to elect their candidates to state and local offices. While Tennessee elected its first black of the century to the General Assembly in 1964 and abolished multi-member districts in urban counties in 1965 because they discriminated against black voters, North Carolina did not elect a black state legislator until 1968, and it refused at that time to abolish multimember districts for the state legislature. In 1967 the North Carolina General Assembly passed a numbered seat system, subsequently declared unconstitutional because it denied equal protection to black voters.[5] *See, Dunston v. Scott*, 336 F. Supp. 206 (E.D.N.C. 1972). Multimember state legislative seats in areas where they diluted the votes of black voters were not eliminated until this Court's decision in *Thornburg v. Gingles,* 478 U.S. 30 (1986).

The direct effect of these racially discriminatory provisions was that at the time the North Carolina General Assembly was considering the plan at issue here, African-Americans were still not being elected to political office in the state in numbers even remotely approaching their representation in the general population, despite the fact that capable and experienced African-American candidates were running for election. As of January 1989, African-Americans were 21% of the state's voting age population but only 8.1% of the elected officials.

In the state House of Representatives, which has 120 members, the number of African-American legislators grew from three in 1981 to fourteen at the time of redistricting in 1991. After the 1992 redistricting, eighteen blacks served in the House, seventeen of whom were elected from single-member majority black districts. One was elected from a multi-member majority white district which allows for single-shot voting. On the Senate side, with fifty members, one African-American was serving at the time of the 1981 redistricting, and five were serving in 1991. After the 1992 redistricting plans were enacted, seven blacks were elected to the Senate,

[4]Although literacy tests were finally discontinued in the early 1970's, the purpose for, and experience of, being required to write a sentence from the Constitution is remembered by many older black voters. Special voter registrars from Charlotte to Gatesville continue to encounter African-Americans who are reluctant to register for a variety of reasons. Over the past seven years, a special registrar in Charlotte has met potential voters who still express the belief that they could not register if they were unable to read or write.

[5]The same legislature that adopted the multimember districts and numbered seat system also refused to add Durham County to the Second Congressional District because it would allow too great a black voter influence in that district.

five of whom won in majority-black single-member districts, and two of whom won in multi-member majority-white districts. Three majority-black single-member districts elected white representatives, two in the Senate and one in the House. **No single-member majority-white district elected a black candidate to the state legislature.**

At the local level, in 1989, of 529 county commissioners throughout the state, 36 were black. Most of the African-Americans holding local offices were elected as a result of lawsuits or negotiated settlements changing the method of election from an at-large system to single member districts. Keech & Sistrom, *supra*, at 171-72 & 178-79. At the time the challenged plan was passed by the General Assembly, no candidate who was the choice of the black community had ever won election to a statewide non-judicial office since 1900. No African-American had been elected to Congress from North Carolina during the same period. Although candidates of choice of the state's African-American voters were elected to public office from single-member districts where black voters were in the majority, the relative percentages of black elected officials in North Carolina in the early 1990's had actually not increased over those present in 1984 when the district court in *Gingles* considered this factor as relevant to the totality of circumstances inquiry in a vote dilution claim. *Compare Gingles v. Edmisten*, 590 F. Supp. at 365 (Blacks hold 9% of city council seats, 7.3% of county commission seats; 4% of sheriff's offices, 9.2% of the state House; 4% of the state Senate) *with* D. I. Stips. 76-80 (in 1989 Blacks held 8.1% of all elected offices; 8.8% of the state legislative seats; 6.9% of county commission seats; 4% of sheriff's offices). *See also*, 42 U.S.C. § 1973(b) ("The extent to which members of a protected class have been elected to office in the State or political subdivision is one circumstance which may be considered.")

The political participation of African-American voters in North Carolina is further impeded by the fact that they continue to suffer from a disproportionately low position on virtually every measure of socio-economic status. There is a significant history of official discrimination in education, housing, employment and health services in North Carolina which has resulted in blacks as a group having less access to transportation and health care and being less well-educated, less-well housed, lower-paid, and more likely to be in poverty than their white counterparts.[6]

These disparities make it more difficult for black citizens to register, vote, and elect candidates of their choice. For example, black citizens who are illiterate or semi-literate have been intimidated by the voting process because of their limited abilities. Many low-wage and hourly workers have limited access to transportation and cannot afford, or are not given, the time off to vote. Black citizens are hindered in their ability to field candidates and to participate effectively in the political process by their lower financial status, lower educational attainment, lack of employment security and lack of physical resources.

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[6]For example, in 1989, 27.1% of African-Americans in North Carolina had incomes below the poverty level, while 8.6% of whites did. The average per capita income for whites was nearly twice that of blacks. Roughly three-quarters of the state's whites were high school graduates, while slightly over half the state's blacks had a high school education. Nearly a quarter of black households had no car available, while only six percent of white households were careless. Fifteen percent of black households had no phone, while only four percent of white households were without a telephone. Lacking financial resources, transportation and easy communication makes supporting an effective political campaign much more difficult.

As noted by the *Gingles* court, lower socio-economic status both hinders blacks' ability to participate effectively in the political process and gives rise to special group interests. *Thornburg v. Gingles*, 478 U.S. 30, 39 (1986). Evidence at the trial of this case established that black residents of North Carolina have distinctive group interests and face unique problems that are addressed at the federal policy level and require effective representation in Congress. These include housing, access to credit, education of economically disadvantaged youth, unemployment, community economic development, neighborhood redevelopment, the unique concerns of historically black colleges and universities, discrimination in housing and employment, and civil rights.

Prior to the election of an African-American to Congress from North Carolina in 1992, North Carolina's congressmen demonstrated a lack of responsiveness to the particularized needs of their black constituents. In Guilford County, African American organizations regularly contacted their previous, white Congressman concerning civil rights measures and famine aid to Africa, with little success. Robert Albright, a past President of Johnson C. Smith University, an historically black institution in Charlotte, found little support for educational and community development efforts from his previous white congressman, even though the congressman served on the University's Board of Visitors. Black residents in many parts of the state found their pre-Chapter 7 Congressmen unresponsive to the particularized needs of their black constituents.

This anecdotal evidence is supported by the findings of Dr. Kousser's study of congressional roll call behavior which shows that today there is a difference in the effectiveness of representation of African-American interests by those elected by African-American voters as compared with those elected from districts in which African American voters are not in the majority.

The data reported by Dr. Kousser indicate that before 1993, even in the most heavily African-American plurality districts, voting patterns of North Carolina congressmembers on conservative roll call voting indices demonstrate diminished responsiveness to African- American concerns. The numbers show, for example, that throughout the 1970's and 80's, congressmembers elected from heavily African-American districts 1 and 2 consistently scored between 60% and 80% on conservative voting indices. In contrast, Representatives Watt and Clayton score 11% on these indices.

A review of national and North Carolina public opinion surveys indicates that there is marked divergence in the beliefs and opinions of blacks and whites, particularly in their beliefs about the degree of discrimination in American society and their beliefs about the causes of inequality, perceptions that influence the political programs that people favor. In the absence of majority black districts, congressmembers lack the leeway to represent consistently and effectively the particular interests of their African-American constituents.

C. Racial Discrimination in Prior Congressional Redistricting. The history of discrimination against African-Americans in congressional redistricting in North Carolina goes back to 1872, when the state legislature intentionally packed black voters into the "Black Second". The Black Second effectively confined black voters' control, in a state that was approximately one-third African-American, to a maximum of one district in nine. The shape of the Black Second was described by Republican Governor Todd Caldwell as "extraordinary,

inconvenient and most grotesque." Anderson, Eric, Race and Politics in North Carolina, 1872-1901: The Black Second, 3 (1981).

More recently, legislators took special pains in 1965-66 and 1981-82 to dilute black voting strength in order to diminish the political leverage of black voters and the political prospects of potential black candidates. In both instances, the issue was where to place the large and politically active black population in Durham County so that black voters would not have too much influence in the district. In 1965 the solution to the "problem" was to place Durham County in the Fifth District rather than create a district in the triangle (Raleigh-Durham-Chapel Hill) that might have elected a congressman responsive to black political interests. In 1981, the solution passed by the legislature was "Fountain's Fishhook", a strangely shaped district that curved around Durham to exclude it from L. H. Fountain's second district. The Justice Department denied that plan preclearance on the grounds that the plan had the purpose and effect of diluting minority voting strength.

Following the Justice Department's rejection, and in the face of a legal challenge on vote dilution grounds, the legislature redrew the plan to include Durham in the Second District, and simultaneously shift other black populations, notably Northampton County, one of the state's majority-black counties, out of the Second. The Justice Department precleared the second plan because it was approximately 40% black in total population.

As a result of this new Second district, great hope was generated that African-Americans finally had an opportunity to elect an candidate of their choice. There had been two earlier campaigns by African-American candidates for congress. In 1968, Eva Clayton was the first African-American to run for Congress since 1898. When she began her campaign, blacks constituted only 11% of the registered voters, though they comprised 40% of the Second District's population. The political climate was hostile and discouraging for black voters and candidates. Prior to 1968 several lawsuits had been brought in, in the Second district to protest overt barriers to black voter registration. Mrs. Clayton's candidacy was not taken seriously by the media or by political observers. Very few white voters were willing to be openly associated with her campaign. Although she was defeated, Eva Clayton's campaign resulted in increased levels of black voter registration in the district.

In 1972, after Orange County was added to the Second District, Howard Lee announced his bid for the Democratic party's nomination. Elected Mayor of the majority-white town of Chapel Hill in 1969, and re-elected in 1971, he was the first black mayor in the state during the twentieth century. He had been named vice-chairman of the state Democratic party in 1970. Lee worked to establish relationships with the white community, and also expected to increase the registration of black voters in the district. His defeat in the primary was generally believed to be a result of voting along racial lines.

Following the 1981 redistricting, serious campaigns were mounted by Mickey Michaux and Kenneth Spaulding in the Second Congressional District, in 1982 and 1984 respectively. Both the Michaux and Spaulding campaigns were serious, strong, well-financed efforts of experienced, well-known candidates with broad support across the district. Despite employing careful and well considered strategies to appeal to voters of both races, neither candidate was

able to obtain the Democratic party nomination because of racially polarized voting and the use of racial appeals in the campaigns. Subsequently, potential African-American candidates logically concluded that the expenditure of effort, time and money to run a congressional campaign was not feasible in the light of continued racially polarized voting and the strong perception that they could not win.

D. 1991 Congressional Redistricting Process. With the 1990 reapportionment and the increase of North Carolina's congressional delegation from eleven to twelve members came the opportunity to redress past wrongs and correct the effects of current discrimination. Members of the 1991 North Carolina General Assembly had lived through, and been active participants in, the history of electoral politics discussed above. Well over half had been in the General Assembly in 1986 when they were required by the *Gingles* litigation to create eight majority-minority districts; and fifty-eight had been members of the 1981 General Assembly which elected to redraw the congressional redistricting plan following the Justice Departments' refusal to preclear the first plan. In legislative floor debates, and in subsequent testimony, legislators explained their familiarity with the history of discrimination.

Representative David Flaherty said: "When my father served in the legislature 20 years ago, there was only, I think, one black, maybe two and only a couple of Republicans."

Senator Ralph Hunt stated that he was a product of, and participant in, a separate-but-equal school system:

> We are talking about books handed down after the black schools placed their orders for new books. Those from the white schools were sent to the black schools, the used ones, and the new order were sent to the white schools. The desks were the same way. ... And of course, our educational system was administered as it was then simply because there were not black people in the process to have input and be aware and take care of the interests of black people at that time.

Senator Kincaid stated:

> I don't think I've mentioned this on the floor of this Senate before, but back in 1967, when I was a high school teacher, I had the opportunity to teach the first integrated class in Caldwell County. And I saw firsthand how inferior the black schools were at that time.

Senator Walker, after explaining the experience with racial appeals in the Gantt/Helms campaign, stated:

> So, I just want to say I support this bill because I think so far as the blacks are concerned that yes, they deserve two black districts. After going through a 1990 race, they can see we still need to make some improvements in how our relationships are between our people.

IV. Implications of Redistricting Law Today in North Carolina.

Following enactment of the state legislative redistricting plan in 2001, a lawsuit was filed in state court seeking to enforce a provision of the State Constitution that previously had been found to be in conflict with the Voting Rights Act, namely the "whole county provision" which requires legislative districts to be made up, to the extent possibly, by whole counties. *Stephenson v. Bartlett,* 355 N.C. 354, 562 S.E.2d 377 (2002) (*Stephenson I*) and *Stephenson v. Bartlett,* 358 N.C. 219, 595 S.E.2d 112 (2004), (*Stephenson II*). As a result, the only counties that can be divided in drawing legislative districts are those covered by the non-retrogression requirement of Section 5 of the Voting Rights Act, or where there is potentially a Section 2 violation. Dividing counties is generally necessary to draw majority-black districts.
Last year the Fourth Circuit, in *Hall v. Virginia,* 385 F.3d 421 (4th Cir. 2004), held that in order to show a potential violation of Section 2 of the Voting Rights Act, plaintiffs must demonstrate that they constitute 50% or more in a single-member district, foreclosing the possibility of influence or coalition district claims. A petition for certiorari is currently pending in the Supreme Court, No. 04-870, but if this ruling stands, and Section 5 is not reauthorized, application of the whole county provision will likely result in the loss of eleven of the state's twenty-one districts that elect an African-American to the North Carolina General Assembly.

V. The Department of Justice's Enforcement of Voting Rights

Section 5, Section 203 and the provisions regarding federal examiners and observers are crucial to the Justice Department's ability to address racial discrimination in voting. The Department receives numerous requests for assistance with elections every year, often because minority voters expect to face a variety of difficulties, including harassment and intimidation, on election day. For example, in an August 1999 primary election in Mississippi, federal observers told DOJ that a white pollwatcher had a camera that she used only to take pictures of African-American voters who needed assistance in casting their ballots (because of physical needs or illiteracy). The observers reported this to the Voting Section attorneys who contacted the county election official and led to a cessation of the conduct.

Section 203 is a crucial tool for the Department's enforcement of protections for limited-English proficient citizens. In a lawsuit against Passaic County and City, NJ, both of which have significant Spanish-speaking populations, the city and county agreed to a comprehensive consent decree, in which they agreed to translate all election materials into Spanish and hire Spanish-speaking election workers to assist Spanish-speaking voters in the election process. In addition, city officials solicited the Hispanic community's input into these procedures (an unprecedented effort), and made a commitment to work with that community in developing and implementing an effective permanent bilingual election program for the future. Under the agreement approved by the court, federal observers were permitted to monitor election day procedures to ensure that Hispanic voters were allowed the equal access to the election process and fair treatment the Act requires.

PREPARED STATEMENT OF CLAUDE FOSTER, NATIONAL FIELD DIRECTOR, NAACP NATIONAL VOTER FUND, BEFORE THE NATIONAL COMMISSION ON THE VOTING RIGHTS ACT

Testimony

By

Claude Foster, National Field Director

NAACP National Voter Fund

This August we will celebrate the **40th anniversary of the Voting Rights Act of 1965,** the act that made state laws restricting political participation by African -Americans and other minorities illegal.

The **National Voter Fund** recently participated in the **40th anniversary of the Selma to Montgomery Voting Rights March**. For me it was also a homecoming, having grown up in Selma as a youth and having participated, as a youth, in many demonstrations for African-American's right to vote.

The **1965 Selma to Montgomery March** was in response to "**Bloody Sunday**," that Sunday in March when America watched in horror as law enforcement officers viciously attacked men, women and children at the foot of the **Edmund Pettus Bridge** for simply marching for the right to vote.

The memories of men on horseback chasing and beating the civil rights marchers through the streets of **Selma**, even riding up on porches to get in the last, vicious lick, are as vivid today as they were 40 years ago. But the marchers' brave crusade, as well as the deaths of martyrs such as **Jimmie Lee Jackson, Reverend James Reeb and Viola Gregg Liuzzo** compelled the nation to support the passage of the historic **Voting Rights Act** a few months later.

This **Act** became landmark legislation that outlawed poll taxes, literacy tests, and other forms of voter disenfranchisement that had been waged against African-American citizens throughout the south for many decades.

The **40th anniversary of the Voting Rights Act** deserves celebration. The bravery of the many marchers at **Selma's Edmond Pettus Bridge**, and a growing tide of disenchantment with violence against African-Americans wanting nothing more but the right to vote, pushed Congress to make the constitutional promise of **"one man, one vote"** a reality for African-Americans.

In two years, this legislation comes up for reauthorization. Unfortunately, many Americans are unaware of just how this law works, as evidenced by the fact that it is all over the internet that African Americans will lose the right to vote in 2007. There could be nothing further from the truth. The Fifteenth Amendment establishes the right of African-American citizens to vote. However, there are still systematic efforts to keep African-Americans and other minorities from casting their vote and having their vote counted. That's why we need to act now and not wait until 2007.

Mr. Chairman, I want to thank the Lawyers Committee for Civil Rights under Law and the National Commission on the Voting Rights Act for conducting these very important hearings.

In the letter that I received from the Lawyers Committee, I was asked to give a five to ten minute presentation focusing on:
1) The efforts of African American voters in Texas to Vote free from discrimination and for the candidate of their choice, and
2) A brief discussion on our efforts to address acts of discrimination against these voters and the results of such efforts.

In this past election cycle, the **NAACP National Voter Fund** registered 214,769 new voters. Of that total, **28,021** new voters were added to the rolls in Texas. We know from history and past elections that African Americans would encounter problems at the polls. Not just in Texas, but around the country. The NAACP National Voter Fund, the NAACP and many other national, state and local organizations have spent years developing election protection programs designed to prevent disenfranchisement.

However, efforts to disenfranchise African-American voters continue and center on the following:

:

- **Evasion of the Voting Rights Act, Section 5**
- **Harassment of African American voters at the polls**
- **Removal of African Americans from voting lists.**

As part of my testimony, I brought with me documentation to illustrate just how African Americans are still disenfranchised. I'd like to take a few moments and discuss some of the complaints received from actual voters in Harris County, Texas:

"Said they could not vote because they were not in that county. They claimed they ran out of ballots."

"Tried to vote and precinct judge told him he was not on rolls. Told he could not vote in elections."

"Was told by precinct judge that she could not vote because she was not in city limits. She voted at that same place for 12 years."

"Showed a list of signed names of the only people who could vote. White people of same zip code were allowed to vote."

"The women would not let her vote. Did not try to help her find out what precinct to vote in and ultimately was discouraging."

"Drove 30 miles to vote from original precinct and was again told she couldn't vote. Never allowed to vote today."

"They asked her name without asking for I.D. & told her she was not eligible to vote. She received the challenged ballot and when she tried to submit the ballot, they rejected it saying she could not vote."

"Told she could not vote because she wasn't in the county. White people were allowed to vote though."

"Saw a list of handwritten names and was told that those people's votes wouldn't count. Also her husband was on that list and she was told she was not allowed to vote. The precinct or school called the police. Black people were not being allowed to vote".

"Tried to vote and precinct judge told him he was not on rolls. Told him he could not vote in elections."

Mr. Chairman, I also brought with me some additional documents which clearly show the continued disenfranchisement of African-Americans in Texas. I ask that the documents be included in the record as part of my testimony here today:

1. A copy of Voter Irregularity Hearings conducted by the Houston Coalition for Black Civic Participation on which I was a panel member. The hearings document complaints such as those described above.

2. A copy of a letter from Keryl Douglas, NAACP Region VI Director. The letter was sent to Beverly Kaufman, Harris County Clerk in regards to complaints received during the November 6th , 2001 Houston mayoral election in which Ms. Douglas stated that Harris County officials may have committed serious violations of the Voting Rights Act, the Motor Voter Law, and Texas Elections Laws.

3. A copy of the NAACP's Southwestern Region VI. Press release, dated December 1, 2001 detailing the assault of one of the NAACP's Voter Empowerment Volunteers for assisting a voter to the polling station at the voter's request.

4. A copy of a press release announcing the formation of the Harris County Voter Assistance Task Force set up to address issues in response to allegations by voters of intimidation.

Mr. Chairman, without the **Voting Rights Act**, what other tool would minority communities have for redress if a state, county, city, or town adopted a discriminatory new procedure or changed voting locations without adequately notifying the community? This was done in the Houston mayoral election in 2001 when over 166 precincts were changed without the African America Community being notified. The community was not notified of the changes until the civil rights community challenged election officials under Section 5 of the Voting Rights Act. Or, what about the students at Prairie View A& M University who were denied the right to vote because election officials challenged the students' residency requirements?

The NAACP National Voter Fund worked in over 11 states this past presidential election cycle, registering over 475,000 new voters since 2000, and mobilizing over one million voters who voted in various elections since then. The results have led to historic increases in African American voter participation despite well-documented cases of voter intimidation, unfair purges and other barriers as I have described in my testimony here today. The Voting Rights Act is the reason for the continued enfranchisement of the African American community despite continual efforts to deny access to the voting booth.

Mr. Chairman, thank you for conducting these hearings today. I look forward to answering any questions you and the commission members may have.

PREPARED STATEMENT OF JAMES U. BLACKSHER BEFORE THE NATIONAL COMMISSION ON THE VOTING RIGHTS ACT, MARCH 11, 2005

Statement of James U. Blacksher at the hearing conducted by
The National Commission on the Voting Rights Act
Lawyers' Committee for Civil Rights Under Law
Montgomery, Alabama
March 11, 2005

Thank you for giving me the opportunity to testify about why it is critically important to the equal rights of African Americans and the emerging Latino and Asian-American communities in Alabama for Sections 5 and 203 of the Voting Rights Act to be reauthorized and strengthened in 2007.

There is no doubt in the minds of every fair-minded observer that if Section 5 is not reauthorized the State of Alabama and many of its political subdivisions will attempt rapidly to reverse or to undermine the gains African Americans have made under the Voting Rights Act in the last three decades. In Alabama's political culture, if the Congress of the United States were to tell the white majority that it is no longer legally prohibited from making changes that roll back and even completely submerge the political and electoral influence of African Americans, it would send a signal that maximization of the majority's power, the principle that dominated Alabama politics from 1819 at least to passage of the 1982 Voting Rights Act, has been restored. This is not necessarily a matter of racial discrimination in the eyes of most of us white Alabamians. Rather, as historian J. Mills Thornton has testified in open court, in traditional Alabama politics the purpose of white supremacy "as those whites, who held this idea would have understood it, [is] to preserve civilization in the republic, ..., they understand themselves to be fighting to preserve the essence of the republic." *Knight v. Alabama*, 787 F.Supp. 1030, 1068 (N.D. Ala. 1991), *aff'd in relevant part*, 14 F.3d 1534 (11th Cir. 1994).

Examples of how Alabama's white majority would reassert its historically claimed right to dominate African Americans and other non-white ethnic communities can be found in the following evidence:

* **Racially polarized voting** remains as strong as ever. Contrary to the wishful thinking of some who argue that a new day has dawned in this country, whites in Alabama still are unwilling to support African-American candidates.

  Exhibit A to this statement is the supplemental report of Dr. Richard L. Engstrom, Research Professor of Political Science at the University of New Orleans, analyzing November 2004 election returns, which has been placed in evidence in *Dillard v. Chilton County Commission*, CA No. 87-T-1179-N (M.D. Ala.). Chilton County entered into a consent decree in 1988 adopting a seven-member county commission elected by cumulative voting. The scatter plot on page 6 graphically displays racially polarized voting as severe as we have ever seen. The black candidate, Bobby Agee, received an average 5.2 to 5.6 votes from every African-American voter, but only 0.1 to 0.2 votes from every white voter. See page 7. Dr.

Engstrom concluded from these data: "Voting in the 2004 county commission election was clearly polarized along racial lines. While Mr. Agee finished second overall in this election, and therefore won one of the seven seats, he would have finished last if only the votes of the non-African American voters were counted." Page 8.

Recent judicial decisions have confirmed the continuing patterns of racially polarized voting all over the State of Alabama. E.g., *Dillard v. Baldwin County Commission*, 222 F.Supp.2d 1283, 1290 (M.D. Ala. 2002), *motion to alter or amend denied*, 282 F.Supp.2d 1302 (M.D. Ala. 2003), *aff'd* 376 F.3d 1260 (11th Cir. 2004) ("The plaintiffs have shown that black citizens of Baldwin County still suffer from the racially polarized voting and from historically depressed conditions, economically and socially."); *Montiel v. Davis*, 215 F.Supp.2d 1279, 1283 (S.D. Ala. 2002) (3-judge court) (*citing* Report of Richard L. Engstrom regarding statewide pattern of cohesive African-American voting).

Because so few white voters will support an African-American candidate, there is not a single African American holding statewide office in Alabama today. Both (initially appointed) incumbent African Americans serving on the Supreme Court of Alabama were defeated in 2000 by white opponents. Every African-American member of the Alabama Legislature was elected from a single-member district with an effective black voter majority.

* **Signs of retrogression expected to come** if Section 5 is not reauthorized include the following:

A federal judge recently made findings of fact that "[t]he historical fears of white property owners, particularly those residing in the Black Belt, that black majorities in their counties would eventually become fully enfranchised and raise their property taxes motivated the property tax provisions in the 1901 Constitution and the amendments to it in 1971 and 1978. ... Black Belt and urban industrial interests successfully used the argument that it is unfair for white property owners to pay for the education of blacks to produce all the state constitutional barriers to property taxes from 1875 to the present, including the 1971 and 1978 Lid Bill amendments." *Knight v. Alabama*, __ F.Supp. __ (N.D. Ala., Oct. 5, 2004) (manuscript opinion is posted at www.knightsims.com). Among the racially motivated provisions in the Alabama Constitution found by the court are voter referendum requirements intended to block the enactment of property tax increases not favored by white majorities. As a result, Alabama has the lowest property taxes of all 50 states. In fact, if they were doubled, they would still be the lowest in the U.S.

The effort of Alabama's Republican Governor, Bob Riley, to make modest reforms in the property tax system by amending the state constitution in 2003 was defeated at the polls 68% to 32%. The only counties where yes votes outnumbered no votes have majority-black electorates. The well financed opposition to the amendment used race-coded messages that have long been understood in Alabama. They said most voters support more funding for public schools but they should not trust their state and local governments to spend the taxes wisely. Since 1993, the Alabama Legislature has had substantial black proportional representation in both houses, and since the late 1980s most local governments have gained black representation through court decrees, precisely the circumstances that white property owners feared most when they enacted the last constitutional barriers to property taxes in 1978.

In the past two decades, pursuant to federal court rulings and consent decrees based on the Voting Rights Act, the Alabama Legislature, the State Board of Education and nearly 200 county commissions, school boards and municipal councils in Alabama changed to election systems that for the first time provided African Americans an opportunity to elect candidates of their choice. Since then, many of these racially fair election systems have been subject to repeated attacks in court.

> The Alabama House and Senate redistricting plans successfully negotiated in a state court consent decree by black political leaders in 1993, which for the first time produced black proportional representation in the state legislature, had to survive several collateral attacks and an adverse ruling by a three-judge federal court in Montgomery, which finally was reversed and dismissed by the U.S. Supreme Court on procedural grounds. *Sinkfield v. Kelley*, 531 U.S. 28, 121 S.Ct. 446 (2000), *reversing Kelley v. Bennett and Sinkfield*, 96 F.Supp.2d 1301 (M.D. Ala. 2000) (3-judge court). It must be noted that, to his credit, Attorney General Bill Pryor helped defend the 1993 plan against these attacks.
>
> In 2001 the Alabama Legislature for the first time in history successfully enacted and obtained Section 5 preclearance of Congressional, House and Senate and State Board of Education redistricting plans, thanks primarily to the ability of African-American legislators to leverage the bargaining power provided by Section 5's no-retrogression mandate to win legislative majorities for these plans. Exhibit B is a copy of the redistricting guidelines adopted by the Legislature in 2001. The mandate of Section 5 of the Voting Rights Act had the highest priority among these

guidelines, next to the one-person, one-vote requirement. Section 5 provided the fulcrum around which the necessary political compromises were worked out.

But all these legislatively enacted redistricting plans had to survive collateral attacks by white voters. Again, Attorney General Pryor helped in the ultimately successful defense of these plans. See *Montiel v. Davis*, 215 F.Supp.2d 1279 (S.D. Ala. 2002) (3-judge court); *Barnett v. Alabama*, 171 F.Supp.2d 1292 (S.D. Ala. 2001) (3-judge court); *Rice v. English*, 835 So.2d 157 (Ala. 2002); *Montiel v. Bennett*, CA No. 01-D-1376-N (M.D. Ala., April 29, 2002) (3-judge court) (dismissing complaint after congressional plan obtained Section 5 preclearance).

In 1987, following a federal court decision finding that the Alabama Legislature for over a century manipulated election laws purposefully to minimize or altogether to exclude African Americans' participation in electing local governments, *Dillard v. Crenshaw County*, 640 F.Supp. 1347, 649 F.Supp. 289 (M.D. Ala. 1986), the State of Alabama agreed to a consent decree that brought over 180 local governments into the defendant class and gave them the choice of agreeing to change their racially discriminatory election systems or proceeding to trial on the merits. One of those local jurisdictions, Baldwin County, agreed that its system for electing county commissioners violated the Voting Rights Act, but it would not agree with plaintiffs about what system to install in its place. So the federal court in 1988 ruled that, to comply with the Voting Rights Act, the commission should be expanded from four to seven seats, all to be elected from single-member districts, one of which would allow black voters to elect a candidate of their choice. *Dillard v. Baldwin County Commission*, 694 F. Supp. 836 (M.D. Ala. 1988), *aff'd summarily*, 863 F.2d 878 (11th Cir. 1988). Subsequently, in *Holder v. Hall*, 512 U.S. 874 (1994), the Supreme Court held that federal courts lack authority under the Voting Rights Act to order a change in the number of seats on the governing body. When four private Baldwin County citizens launched a collateral attack on the federal court's remedial decree, the State of Alabama joined the attack, even though the Baldwin County Commission defended the court's decree. Ultimately, the federal district court held that the State could renege on its agreement that the old state law election system violated the Voting Rights Act, and it ordered a return to that discriminatory election system. *Dillard v. Baldwin County*

Commission, 222 F.Supp.2d 1283 (M.D. Ala. 2002), *motion to alter or amend denied*, 282 F.Supp.2d 1302 (M.D. Ala. 2003), *aff'd* 376 F.3d 1260 (11th Cir. 2004). Judge Myron Thompson concluded his retrogressive order with this lament:

> To be sure, as recounted by the court, Alabama's black citizens have suffered a century and a half of debilitating and humiliating discrimination in voting that has left many of them economically, socially, and politically depressed. However, under federal law, which requires a causal connection between these circumstances and the current election scheme, those in Baldwin County who remain victims today have no unblocked path of voting relief leading into the federal courts.

222 F.Supp.2d at 1291.

Even more disturbing is the State's support of white citizens' collateral attack on the 1988 consent decree that increased the seats on the Chilton County Commission to seven and agreed to the use of cumulative voting. *Dillard v. Chilton County Bd. of Education and Chilton County Commission*, 699 F.Supp. 870 (M.D. Ala.), *aff'd* 868 F.2d 1274 (11th Cir. 1988) (*cited with approval in Branch v. Smith*, 123 S.Ct. 1429, 1461 (2003) (O'Connor, J., concurring), ("a court could design an at-large election plan that awards seats on a cumulative basis, or by some other method that would result in a plan that satisfies the Voting Rights Act"). *But see Dillard v. Baldwin County Commission*, 376 F.3d 1260, 1268 (11th Cir. 2004) ("After reviewing the record, we agree with the district court's finding that cumulative voting schemes simply do not occupy 'a traditional and accepted place in Alabama's legislatively enacted voting schemes.' *Dillard V*, 222 F.Supp.2d at 1291. The federal courts have no authority to conjure up such an election scheme and impose it on a state government, regardless of the theoretical prospect of increasing minority voting strength.")). This situation differs from the Baldwin County case in that both the State and Chilton County agreed to a remedy and entered into a consent decree, an agreement that the State of Alabama presently is attempting to repudiate. The Chilton County case is scheduled for trial this April.

For the last three years, black legislators have tried unsuccessfully to get a bill through the Legislature that would adopt under state

> law all the election systems either ordered by federal courts or agreed to in federal court consent decrees under the Voting Rights Act. To date, these "Dillard" bills have been defeated.

* There continue to be cases where private citizens have been forced into court to compel the State to submit for Section 5 preclearance changes that affect voting rights. For example:

> In *Ward v. Alabama*, 31 F.Supp.2d 968 (M.D. Ala. 1998) (3-judge court), the district court ordered the State to submit for Section 5 review a change in election law prohibiting the delivery of absentee ballots to "the address where the voter regularly receives mail" and restricting mail delivery to "the voter's residence address." The court noted:
>
> > This change in the law would have had a significant impact on a substantial number of Alabamians, many of them residents of smaller rural communities across the State. In approximately 373 locations in the State of Alabama, the United States Postal Service will not deliver mail directly to homes. Residents of these communities must retrieve their mail from the post office, receiving it either General Delivery or in a rented post office box. Because they cannot receive mail at their "residence address," voters in these communities would no longer receive absentee ballots by mail.
>
> Id. at 969-70 (footnote omitted). One member of the three-judge court expressed his continuing opposition to Section 5 of the Voting Rights Act:
>
> > I wish to go on record, stating with emphasis, that I agree entirely with Mr. Justice Black's dissenting opinion in *South Carolina v. Katzenbach*, 383 U.S. 301, 356, 86 S.Ct. 803, 15 L.Ed.2d 769 (1966). I do not write angrily, but I do write in defense of every United States District Judge who is precluded from reaching the merits of a case falling within the purview of § 5 of the Voting Rights Act. Not only does § 5 require states to grovel at the feet of the Attorney General or the District Court for the District of Columbia, but also it strips southern Federal District Judges of their constitutional power under Article III.
>
> 31 F.Supp.2d at 978-79 (De Ment, J., concurring).
>
> In *Boxx v. Bennett*, 50 F.Supp.2d 1219 (M.D. Ala. 1999), voters in Jefferson County had to obtain a court order requiring the State to submit

for Section 5 review a change in election law that, for the first time in Alabama history, authorized a single voter to demand a recount prior to filing a formal election challenge and without court supervision. The persons demanding a recount had focused solely on alleged irregularities in majority-black precincts.

I have not attempted to summarize all the proposed retrogressive voting changes affecting state and local governments that were blocked by African American citizens' reliance on Section 5 protection. Most of these proposals were modified to eliminate their retrogressive effects before they were ever submitted for preclearance. In the past three years we have been able to dismiss federal court consent decrees with over 65 municipalities by getting them to redraw their single-member districts with 2000 census data and submit them for Section 5 preclearance. These racially fair election systems now operate for the first time under state law, and their survival from now on depends critically on continuation of Section 5's preclearance requirement. Many more municipal, county commission and school board consent decrees must remain in effect and subject to federal court oversight until state law is amended to authorize their racially fair election methods.

In conclusion, I was present at the Congressional hearings preceding passage of the 1982 Voting Rights Act, when Professors C. Vann Woodward and Morgan Kousser gave powerful testimony warning against the end of a second Reconstruction and a repeat of federal abandonment of African Americans in the South after the 1876 Presidential election. In Alabama, the 1875 Constitution is still referred to as the "Redeemer" constitution, because it "redeemed" white rule from "black" rule. Another White Redemption was avoided in 1982, but it will surely come to pass in 2007 if Section 5 is not reauthorized.

Statement of James U. Blacksher at the hearing conducted by
The National Commission on the Voting Rights Act
Lawyers' Committee for Civil Rights Under Law
Montgomery, Alabama
March 11, 2005

Exhibit A

Supplemental Report of Dr. Richard L. Engstrom
in Dillard v. Chilton County CA No. 87-T-1179-N (M.D. Ala.)
February 3, 2005

SUPPLEMENTAL REPORT

John Dillard, et. al. v. Chilton County Commission
by
Richard L. Engstrom, Ph.D.

1. My name is Richard L. Engstrom and I am a resident of New Orleans, Louisiana. I am a Research Professor of Political Science and Coordinator of Graduate Studies in the Department of Political Science at the University of New Orleans (UNO), and the Endowed Professor of Africana Studies at UNO. I have served two terms as the Chairperson of the Representation and Electoral Systems Section of the American Political Science Association (1993-1995, 1995-1997) and continue to serve as a member of the Executive Council for that section. A copy of my curriculum vitae is attached as an Appendix to this report.

2. I have done extensive research into the relationship between election systems and the ability of minority voters to participate fully in the political process and to elect representatives of their choice. The results of my research have been published in the *American Political Science Review*, *Journal of Politics*, *Western Political Quarterly*, *Legislative Studies Quarterly*, *Social Science Quarterly*, *Journal of Law and Politics*, *Electoral Studies*, *Representation*, *Publius* and other journals and books. Three articles authored or co-authored by me were cited with approval in Thornburg v. Gingles, 478 U.S. 30, at 46 n.11, 49 n.15, 53 n.20, 55, and 71 (1986), the Supreme Court decision interpreting amended section 2 of the Voting Rights Act. I am a co-author, with Mark A. Rush, of *Fair and Effective Representation? Debating Electoral Reform and Minority Rights* (Lanham, MD: Rowman and Littlefield Publishers, Inc. 2001).

3. I have also testified as an expert witness in a number of voting rights

cases in federal and state courts across the United States. Since 2001 I have testified at trial and/or been deposed in the following cases: Johnson v. Hamrick (N.D. Ga. 2001), Del Rio v. Perry (200th Dist. Ct. Tx. 2001), Balderas v. State of Texas (E.D. Tx 2001), Johnson v. Bush (S.D. Flda 2001), Jepsen v. Vigil-Giron (1st Judicial District Court, County of Santa Fe, NM 2001, 2002), Arizona Minority Coalition for Fair Redistricting v. Arizona Independent Redistricting Commission (Superior Court, County of Maricopa, AZ, 2002), Curry v. Glendening, Court of Appeals of Maryland (2002), Levy v. Miami-Dade Co (S.D. Flda. 2002), Dillard v. Baldwin Co. (M.D. Ala. 2002), Prejean v. Foster (M.D. La. 2002), Georgia v. Ashcroft (D.C. DC, 2002), Louisiana House of Representatives v. Ashcroft (D.C. DC 2002), United States v. Alamosa County (D. Co. 2003), Comacho v. Galvin and Black Political Task Force v. Galvin, (D.C. Mass. 2003), Stewart v. Blackwell (N.D. Oh. 2004), and Cottier v. City of Martin, S.D., (D.C. SD 2004).

4. Attorneys for the Dillard plaintiffs have asked me to examine the November 2, 2004, general election for the Chilton County Commission to determine whether voting in that election was racially polarized. They also have asked, in light of that election analysis, that I revisit the opinion I expressed in my previous report in this case, dated October 3, 2003, concerning the opportunities that African American have to elect their representative of choice to the county commission provided by the current seven-vote, seven-seat cumulative system, the four-district one at-large arrangement adopted in 2003 by the Legislature, and a four-vote, four-seat cumulative system.

5. I am being compensated at a rate of $200 an hour for my work in this case.

THE 2004 COUNTY COMMISSION ELECTION

6. The data utilized in the analyses of the 2004 county commission election consist of information on the racial composition of the voting precincts in Chilton County, provided by the Alabama Secretary of State's office and the Alabama Department of Voter Registration, and the election returns for Chilton Count that day provided by the Chilton County Probate Office.

7. In assessing the extent to which the candidate preferences of the African American voters differed from those of the non-African American voters in the county commission election I have derived estimates of group support for candidates through three different analytic procedures. These include the two methods approved for this purpose by the United States Supreme Court in Thornburg v. Gingles [478 U.S. 30, at 52-53 (1986)], which are ecological regression analysis and homogeneous precinct (or extreme case) analysis. Homogeneous precinct analyses simply report the relative levels of support a candidate or set of candidates received within the precincts in which over 90 percent of the people casting ballots was not African American and within those in which over 90 percent was African American. Regression analyses provide estimates of the support for the various candidates among both African American and non-African American voters based on the votes cast in all of the precincts in an election.[1] The third

[1] Correlation coefficients reflecting how consistently the vote for a candidate varies with the relative presence of African Americans in the precincts are reported along with the results of the regression analyses. The correlation coefficient can achieve values ranging from 1.0 to -1.0. A value of 1.0 indicates that as the African American percentage increases across precincts, there is a perfectly consistent increase in the support received by a designated candidate. A value of -1.0 indicates a perfectly consistent decrease in the support received. When the statistical probability of a coefficient is less than .05, that coefficient is identified as statistically significant. The only correlation coefficients in the tables below that are statistically significant are identified with an "*" following the value of the

methodology I employ is called Ecological Inference (or EI). This is an estimation procedure that also takes into account all of the precincts in which votes are cast that was developed subsequent to Thornburg v. Gingles by Gary King.[2]

8. The data I rely upon to measure the relative presence of African Americans in each precinct are the "voter turnout" data provided by the Secretary of State's office. These data identify the number of African Americans and non-African Americans that received ballots for this election in every precinct. A comparison of the total number of people voting in each precinct, based on these data, with the number of "ballots cast" in each precinct, as recorded on the election returns, reveals a significant disparity between these numbers for one of the 18 precincts in the county, the Jemison Fire Department precinct. In this precinct the number of ballots cast, as reported on the election returns, was 1,613, but the number of people receiving ballots was reported in the turnout data to be 626. This is a discrepancy of 987 voters, -61.2 percent of the ballots cast figure.[3] Given that 1,607 votes were cast in the presidential election on this day in that precinct, the turnout number is obviously in error. An effort to resolve this discrepancy by consulting with Mr. Tracy Cleckler in the Secretary of State's office and Mr. Bill Popwell in the Chilton County Board of Registrars' office failed to resolve the discrepancy.

9. Given this discrepancy, I have analyzed this election in two ways. In one

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coefficient.

[2] This procedure is the subject of Gary King, A Solution to the Ecological Inference Problem: Reconstructing Individual Behavior from Aggregate Data (Princeton University Press, 1997)].

[3] Discrepancies between these two sets of data are common, but generally not large like this. The next highest discrepancy among the precincts is one in which the number of ballots cast was 1,657, while the number of voters is 1,739, a difference of 82 or +4.9 percent.

analysis I have included an estimate of the racial composition of the electorate in the Jemison Fire Department precinct by using the ballots cast figure for that precinct for the total turnout and dividing this number into African Americans and non-African Americans by assuming that the registered voters within the two groups of voters in this precinct voted in the commission election at the same rate. The registration data closest to the date of the election that I have been provided are for December 8, 2004. These data indicate that African Americans constitute 13.64 percent of the 2,558 registered voters in the precinct. I therefore identified 220 of the voters as African American and 1,393 as not African American. In order to determine the extent to which this precinct would impact the overall results of the analysis, I also performed a second analysis in which this precinct is excluded and the analysis performed on the other 17 precincts.

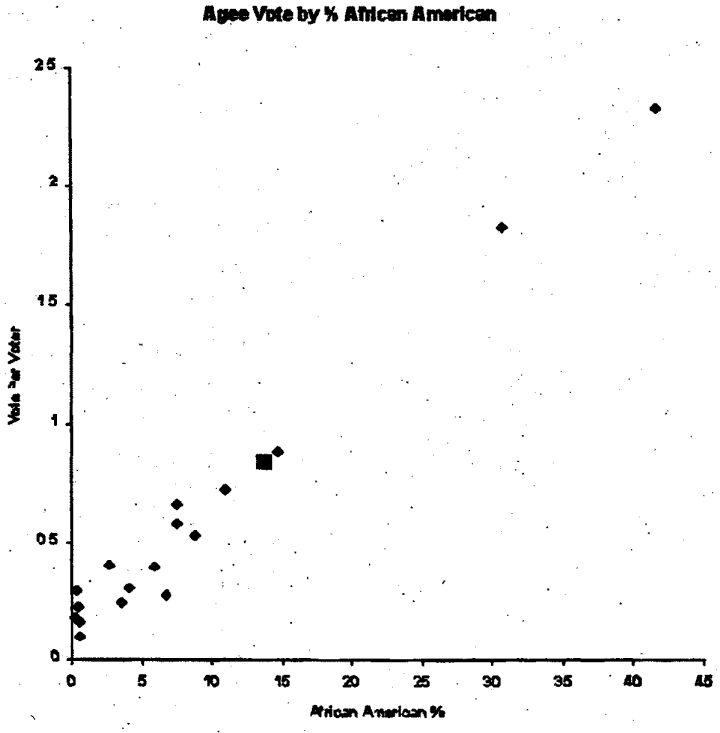
10. The analyses differ very little in what they reveal about racially polarized voting in this election. Figure 1 provides a scatterplot in which the racial composition of each precinct is plotted against the number of votes per voter in that precinct received by Mr. Bobby Agee, the African American candidate in this election. Each precinct is placed in the space according to the percentage of voters turning out in each precinct that is African American (the horizontal axis) and the votes per voter Mr. Agee received in the precinct (the vertical axis). The Jemison Fire Department precinct is the precinct identified with a square rather than a diamond.

11. The scatterplot reveals a pronounced relationship between the racial composition of the precincts and the vote for Mr. Agee. The correlation coefficient for the relationship between these two variables, which reveals how consistently the vote

varies with the race of the voters, is a statistically significant .991, with or without the Jemison Fire Station included.

12. A scatterplot provides a visual picture of how the vote varies by race. The

FIGURE 1



estimation procedures identified above provide point estimates, across the precincts, for the number of votes per voter that Mr. Agee received from African American voters and and non-African American voters. Tables 1 and 2, at the end of this report, contain these estimates for the analysis including all of the precincts and that excluding the Jemison Fire Department precinct, respectively.[4]

13. The tables reveal that Mr. Agee, a long time incumbent on the county commission, is the overwhelming choice of the African American voters. His support among African American voters in the county ranges, across the analyses, from an estimated 5.2 votes per voter to 5.6. He is the first choice of African American voters to represent them on the commission in every analysis. In contrast, his support among the non-African American voters is minimal. The estimates of their support for Mr. Agee based on the ecological inference and regression analyses range from 0.1 to 0.2 votes per voter, and he finishes last in this election in the votes cast by non-African Americans in each type of analysis. The correlation coefficient between the racial composition of the precincts and the votes per voter in them for Mr. Agee, as noted above, is a statistically significant .991. This is much higher than those for any of the non-African American candidates in this election.

14. Absentee votes accounted for only 4.3 percent of the votes cast in the commission election (4643/109,150). Mr. Agee did extremely well among these voters; he was the leading recipient of absentee votes, receiving 1,307 of them (28.1 percent).

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[4] There are no homogeneous African American precincts so not homogeneous estimates can be reported for that group. The Jemison Fire Department precinct was not a homogeneous precinct so the homogeneous precinct estimates reported in Table 1 are not repeated in Table 2.

The second place finisher in the absentee balloting was Mr. Tim Mims, with only 608. Mr. Agee's performance among the absentee voters is consistent with the finding above that he is the overwhelming choice of the African American voters but receives little support from the non-African American voters.

15. Data are not available to match the race of the people actually voting absentee to the absentee votes, but the race of those applying for an absentee ballot can be matched to these votes. The Alabama Judicial Information System lists, by name and address, a total of 794 people applying for an absentee ballot for the November 2004 election in Chilton County. Mr. Agee has identified 206 of these people, 25.9 percent, as African American. Almost all of the people receiving absentee ballots must have voted absentee, as 704 absentee votes (88.7 percent of the number of absentee ballots requested) were cast in the presidential election in the county. These data are consistent with Mr. Agee receiving a high number of votes per voters among the African Americans voting absentee and a minimal number of votes per voter among the non-African Americans voting absentee, the pattern found among those voting in their geographical precincts on election day.

16. Voting in the 2004 county commission election was clearly polarized along racial lines. While Mr. Agee finished second overall in this election, and therefore won one of the seven seats, he would have finished last if only the votes of the non-African American voters were counted.

THE OPPORTUNITY TO ELECT

17. The 2004 election was the fifth straight commission election under the seven-vote cumulative system, first used in 1988, in which Mr. Agee has been elected.

Studies reviewed in my previous report reveal that in the previous four elections, and now this one, this has occurred despite the persistent racially polarized voting present in these elections. This latest election simply provides more evidence that this cumulative voting system clearly provides African Americans in Chilton County with an opportunity to elect a representative of their choice.

18. The analysis of the 2004 election also reinforces my opinion, expressed in my previous report, that the four-district one at-large arrangement the Legislature has adopted to replace the current system would be retrogressive for African Americans. Requiring every commissioner to win by a majority of the votes cast in electoral units in which the other, i.e., non-African American, members of the electorate would constitute a majority (four districts and the county itself) would no doubt eliminate their opportunity to elect a representative of their choice.

19. The analysis of the 2004 election also reinforces my opinion, expressed in my previous report, that the four-district one at-large arrangement would also be worse for African Americans that a four-vote, four-seat cumulative system. If African Americans remain relatively cohesive in a four-vote cumulative election, and the non-African American voters disperse their vote across other candidates, as they did in 2004, the candidate preferred by the African Americans will continue to have a chance to win one of the four seats. While the opportunity to elect a representative in a four-vote, four-seat cumulative system would be weaker than that provided by the seven-vote, seven seat system, it would provide a better opportunity to elect a representative of their choice than the four-district, one-at large alternative.

Table One

Chilton County Commission
General Election, 2004

Estimated Racial Differences in Candidate Support

All Precincts

In the following order:
Ecological Inference
Regression
Homogeneous Precincts

Candidate	African American Voters	Non-African American Voters	Correlation Coefficient
Agee	5.6	0.1	
	5.4	0.1	.991*
	----	0.3	
Benson	0.7	0.4	
	-0.1	0.5	-.250
		0.4	
Headley	0.4	0.5	
	0.3	0.5	-.167
	----	0.5	
Ellison	0.3	0.3	
	-0.3	0.4	-.292
	----	0.4	
Strength	0.3	0.6	
	0.0	0.6	-.403
	----	0.6	
Giles	0.2	0.5	
	-0.4	0.6	-.444
	----	0.6	

Mims, G.	0.2	0.6	
	-0.1	0.6	-.614*
	----	0.6	
Hayes	0.1	0.6	
	-0.4	0.6	-.209
	----	0.5	
Akin	0.1	0.7	
	0.1	0.7	-.358
	----	0.6	
Wyatt	0.0	0.5	
	-0.1	0.5	-.446
	----	0.5	
Heflin	0.0	0.4	
	-0.2	0.5	-.431
		0.5.	
Mims, T.	0.0	0.9	
	2.1	0.7	.264
		0.7	

Table Two

Chilton County Commission
General Election, 2004

Estimated Racial Differences in Candidate Support

Excluding Jemison Fire Department

In the following order:
Ecological Inference
Regression
Homogeneous Precincts

Candidate	African American Voters	Non-African American Voters	Correlation Coefficient
Agee	5.2	0.2	
	5.4	0.1	.991*
Benson	0.3	0.4	
	-0.1	0.5	-.258
Headley	0.5	0.5	
	0.4	0.5	.134
Ellison	0.3	0.3	
	-0.3	0.4	-.310
Strength	0.3	0.6	
	0.1	0.7	-.389
Giles	0.2	0.5	
	-0.4	0.6	-.439
Mims, G.	0.4	0.6	
	-0.1	0.6	-.635*
Hayes	0.3	0.5	
	-0.5	0.6	-.250

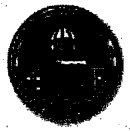
Akin	0.6 0.1	0.7 0.7	-.354
Wyatt	0.4 -0.1	0.5 0.5	-.432
Heflin	0.5 -0.1	0.4 0.5	-.417
Mims, T.	3.9 2.2	0.5 0.7	.282

APPENDIX

Statement of James U. Blacksher at the hearing conducted by
The National Commission on the Voting Rights Act
Lawyers' Committee for Civil Rights Under Law
Montgomery, Alabama
March 11, 2005

Exhibit B

Reapportionment Committee Guidelines
Alabama Legislature
2001




THE ALABAMA LEGISLATURE

PERMANENT LEGISLATIVE COMMITTEE ON REAPPORTIONMENT

REAPPORTIONMENT COMMITTEE GUIDELINES FOR LEGISLATIVE, STATE BOARD OF EDUCATION, AND CONGRESSIONAL REDISTRICTING STATE OF ALABAMA

Pursuant to the Constitution of the United States and the Constitution of the State of Alabama, the Alabama State Legislature is required to review the 2000 Federal Decennial Census data provided by the U.S. Bureau of the Census to determine if it is necessary to reapportion or redistrict Alabama's legislative, State Board of Education, and congressional districts because of population changes since the 1990 Census. Accordingly, the following guidelines for legislative, State Board of Education, and Congressional reapportionment and redistricting have been established by the Legislatures' Permanent Joint Legislative Committee on Reapportionment, hereinafter referred to as the "Reapportionment Committee."

I. POPULATION

Public Law 94-171, enacted by Congress in 1975, requires the U. S. Bureau of the Census to provide small area population counts to the Legislature and the Governor within one year after each Decennial Census, or by April 1, 2001, broken down by major race group and Hispanic origin for the total population, and for persons 18 years old and over. Census maps showing the boundaries of counties, cities, census statistical areas, census blocks, and voting districts (precincts) will accompany these data. The total Alabama state population, and the population of defined subunits thereof, as reported by the 2000 Decennial Census, shall be the permissible data base used for the development, evaluation, and analysis of proposed redistricting plans. It is the intention of this provision to exclude from use any census data other than that provided by the United States Census Bureau, and without stating any preference for enumerated or estimated Census results.

II. EQUAL POPULATION REQUIREMENT: ONE PERSON-ONE VOTE

The goal of reapportioning and redistricting is equality of population of legislative, State Board of Education, and congressional districts as defined below.

1. Legislative And State Board of Education Districts

In accordance with the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, legislative and State Board of Education districts will be drawn to achieve "substantial equality of population among the various districts."

a. As a general proposition, deviations from the "ideal district" population should be justifiable either as a result of the limitations of census geography, or as a result of the promotion of a rational state policy.

b. In keeping with subpart a, above, proponents of legislative and State Board of Education reapportionment plans should establish as a high priority minimizing population deviations among districts. In any case, the relative population deviation for any legislative or State Board of Education district should not exceed plus or minus five percent ("5%). Adherence to this rule will insure that the overall deviation in the plan does not exceed ten percent (10%), which is generally considered by controlling federal judicial decisions as a permissible overall deviation.

c. Any proponent submitting a proposal to the Reapportionment Committee or the Legislature shall submit a detailed explanation of how the deviations in the proposed plan further the rational state policies described in Section IV of these guidelines, or are necessitated by census geography.

2. Congressional Districts

The Apportionment Clause of Article I, Section 2, of the United States Constitution requires that the population of all the congressional districts in a state be "as nearly equal in population as practicable." Accordingly, efforts will be made to draw Congressional redistricting plans in which districts are mathematically equal in population, or which produce the lowest overall range practicable. Any significant deviation from the ideal population must reflect the necessity to achieve some legitimate state objective, and it should be recognized that strict scrutiny will be given any such plan, with the proponent having a heavy burden to demonstrate with specificity the necessity for such deviation. Any proponent submitting a proposal to the Reapportionment Committee or the Legislature shall submit a detailed explanation of how the deviations in the proposed plan further the rational state policies described in Section IV of these guidelines or are necessitated by census geography.

III. VOTING RIGHTS ACT

1. Redistricting plans must meet the provisions of the Voting Rights Act, and shall be constructed so as not to impede the opportunities of blacks and other racial and ethnic groups protected by the Act to participate in the political process and elect representatives of their choice.

2. Proposed redistricting plans must not employ standards, practices, or procedures which have the purpose of, or result in, the denial or abridgement of the right to vote on account of race or color or because a person is a member of a language minority group.

3. Redistricting plans are subject to the preclearance process established in Section 5 of the Voting Rights Act.

IV. CRITERIA FOR LEGISLATIVE, STATE BOARD OF EDUCATION, AND CONGRESSIONAL DISTRICTS

1. All legislative, State Board of Education, and congressional districts will be single member districts which comport with the population equality standards discussed above.

2. No district will be drawn in a manner that subordinates race-neutral districting criteria to considerations that stereotype voters on the basis of race, color, or membership in a language-minority group.

3. A redistricting plan will not have either the purpose or the effect of diluting minority voting strength, and shall not be retrogressive and shall otherwise comply with Sections 2 and 5 of the Voting Rights Act and the fourteenth and fifteenth amendments to the Constitution.

4. All legislative and congressional districts will be composed of contiguous and reasonably compact geography.

5. The following legislative redistricting requirements prescribed by the Alabama Constitution shall be complied with:

a. Sovereignty resides in the people of Alabama, and all districts should be drawn to reflect the democratic will of all the people concerning how their governments should be restructured.

b. House and Senate districts shall be drawn on the basis of total population.

c. The number of Senate districts is set by statute at 35 and, under the Alabama Constitution, may not exceed 35.

d. The number of Senate districts shall be not less than one-fourth or more than one-third of the number of House districts.

e. The number of House districts is set by statute at 105 and, under the Alabama Constitution, may not exceed 106.

f. The number of House districts shall not be less than 67.

6. The following redistricting policies contained in the Alabama Constitution shall be observed to the extent that they do not violate or conflict with requirements prescribed by the Constitution and laws of the United States:

a. Each House and Senate district should be composed of as few counties as practicable.

b. Every part of every district shall be contiguous with every other part of the district.

c. Every district should be as compact as is feasible.

7. The following redistricting policies are embedded in the political values, traditions, customs, and usages of the State of Alabama and shall be observed to the extent that they do not violate or subordinate the foregoing policies prescribed by the Constitution and laws of the United States and of the State of Alabama:

a. Contests between incumbent members of the Legislature, the State Board of Education, or of the Congress will be avoided when ever possible.

b. The integrity of communities of interest shall be respected to the extent feasible. For purposes of these Guidelines, a community of interest is defined as an area with recognized similarities of interests, including but not limited to racial, ethnic, geographic, governmental, regional, social, cultural, partisan, or historic interests; county, municipal, or voting precinct boundaries; and commonality of communications. It is inevitable that some interests will be recognized and others will not, however the legislature will attempt to accommodate those felt most strongly by the people in each specific location.

c. Local community and political leaders and organizations and the entire citizenry shall be consulted to the maximum extent practicable, and their wishes with respect to the configuration of districts shall be complied with to the extent they are lawful and practicable.

d. The plan will attempt to preserve the cores of existing districts.

V. PLANS PRODUCED BY LEGISLATORS

1. The confidentiality of any legislator developing plans or portions thereof will be respected. The Reapportionment Office staff will not release any information on any legislator's work without written permission of the legislator developing the plan, subject to paragraph two below.

2. A proposed redistricting plan will become public information upon its introduction as a bill in the legislative process, or upon presentation for consideration by the Reapportionment Committee.

3. Access to the Legislative Reapportionment Office Computer System, census population data, and redistricting work maps will be available to all members of the Legislature upon request. Reapportionment Office staff will provide technical assistance to all legislators who wish to develop proposals.

4. In accordance with Rule 23 of the Joint Rules of the Alabama Legislature, 1999, all amendments or revisions to redistricting plans, following introduction as a bill, shall be drafted by the Reapportionment Office.

5. Drafts of all redistricting plans which are for introduction at any session of the Legislature, and which are not prepared by the Reapportionment Office, must be presented to the Reapportionment Office for review of proper form and for entry into the Legislative Data Bank.

VI. COMMITTEE MEETINGS AND PUBLIC HEARINGS

1. All meetings of the Reapportionment Committee and its sub-committees will be open to the public and all plans presented at committee meetings will be made available to the public.

2. Minutes of all Reapportionment Committee meetings shall be taken and maintained as part of the public record. Copies of all minutes shall be made available to the public.

3. Transcripts of all public hearings shall be made and maintained as part of the public record, and shall be available to the public.

4. The Reapportionment Committee will hold public hearings at different locations throughout the State in order to actively seek public participation and maximize public input.

5. All interested persons are encouraged to appear before the Reapportionment Committee and to give their comments and input regarding legislative, State Board of Education, and congressional reapportionment and

redistricting. Reasonable opportunity will be given to such persons, consistent with the criteria herein established, to present plans or amendments to plans for legislative, State Board of Education, and congressional reapportionment and redistricting to the Reapportionment Committee, if desired, unless such plans or amendments fail to meet the minimally accepted criteria herein established.

6. Notices of all Reapportionment Committee meetings will be posted on the fifth, sixth, seventh, and eighth floors of the Alabama State House, and the Committee's Website.Individual notices of Reapportionment Committee meetings will be transmitted to any citizen or organization requesting the same, without charge. Persons or organizations who want to receive this information should contact the Reapportionment Office.

VII. PUBLIC ACCESS

1. The Reapportionment Committee seeks active and informed public participation in all activities of the committee and the widest range of public information and citizen input into its deliberations. Public access to the Reapportionment Office computer system is available every Friday from 8:30 a.m. to 4:30 p.m. Please contact the Reapportionment Office to schedule an appointment.

2. A redistricting plan may be presented to the Reapportionment Committee by any individual citizen or organization by written presentation at a public meeting or by submission in writing to the committee. All plans submitted to the Reapportionment Committee will be made part of the public record and made available in the same manner as other public records of the committee.

3. Any proposed redistricting plan drafted into legislation must be offered by a member of the Legislature for introduction into the legislative process.

4. Any redistricting plan developed outside the Legislature or any redistricting plan developed without Reapportionment Office assistance which is to be presented for consideration by the Reapportionment Committee must:

a. Be clearly depicted on maps which follow 2000 Census geographic boundaries or on a reapportionment work map available from the Reapportionment Office;

b. Be accompanied by a statistical sheet listing total population and minority population for each district and listing the census geography making up each proposed district;

c. Stand as a complete statewide plan for redistricting, or, if presenting a partial plan, fit back into the plan which is being modified, so that the proposal can be evaluated in the context of a statewide plan (i.e.: all places of geography must be accounted for in some district);

d. Must comply with the guidelines adopted by the Reapportionment Committee.

5. Electronic Submissions

a. Electronic submissions of redistricting plans will be accepted by the Reapportionment Committee.

b. Plans submitted electronically must also be accompanied by the paper materials referenced in this section.

c. See Appendix B for the technical documentation for the electronic submission of redistricting plans.

6. Census Data And Redistricting Materials

a. Census population data and census maps will be made available through the Reapportionment Office at a cost determined by the Permanent Legislative Committee on Reapportionment.

b. Summary population data at the precinct level and a statewide workmap(s) will be made available to the public through the Reapportionment Office at a cost determined by the Permanent Legislative Committee on Reapportionment.

c. All such fees shall be deposited in the state treasury to the credit of the general fund and shall be used to cover the expenses of the legislature.

NOTE: Please refer to Appendix A for the fee structure of items and materials listed in these guidelines.
Appendix A
Fee Structure
Census Data and Census Maps
Reapportionment Committee
State of Alabama
2000 Census Population Data - Public Law 94-171 (Official 2000 Census data released for the State of Alabama).
Data Available: Hard copy 8 ½ x 11 $ .10 per page.

1. Precinct totals county by county broken down by race and voting age.

2. County block level totals broken down by race and voting age. Report size varies by county depending on the size of the county.

3. Entire state population report.

Maps Available: Hard copy 36" x 42" map sheets.
$5.00 per map sheet (includes postage).

1. Voting Precinct Maps, by county.
The number of map sheets per county varies according to the size of each county.

2. Census Tract Maps, by county.
The number of map sheets per county varies according to the size of each county.

3. County Census Block Maps.
The number of map sheets per county varies according to the size of each county.

Census Data - Census Tiger/Line files and Census 2000 P.L. 94-171 Redistricting Data Summary Files are available for download from the Bureau Of The Census
Electronic Data - Data in electronic form will be provided on a 3 ½ floppy diskette at $20.00 per diskette or on a CD-RM at $30.00 per CD.

*Please note that computer software is required to run the census data and will not be provided by the Reapportionment Office.

Appendix B.

ELECTRONIC SUBMISSION OF REDISTRICTING PLANS

REAPPORTIONMENT COMMITTEE - STATE OF ALABAMA

The Legislative Reapportionment Computer System supports the electronic submission of redistricting plans. The electronic submission of these plans must be on either a floppy disk or CD ROM. The software used by the Reapportionment Office is (PSA) Plan2000.

The electronic file should be in DOJ (Block, district #) format. This should be a two column, comma delimited file containing the FIPS code for each block, and the district number. Plan2000 has an automated plan import that creates a new Plan2000 plan from the block/district assignment list.

MIF (MapInfo interchange) and ArcView shape files can be viewed as an overlay. A new plan would have to be built using this overlay as a guide to assign units into a blank Plan2000 plan. Other formats which can be used as an overlay are MFE, ArcView, ArcInfo, Access, CAD, Map Info, FRAMME, MGDM, MGSM, ODBC Tabular, Oracle Object Model, and Oracle Relational Model. However, in order to analyze the plans with our attribute data, edit, and report on, a new Plan2000 will have to be built

In order for plans to be analyzed with our attribute data, be able to edit, report on, and produce maps in the most efficient, accurate and time saving procedure, electronic submissions are REQUIRED to be in DOJ format.

Contact Information:

Legislative Reapportionment Office
Room 811, State House
11 South Union Street
Montgomery, Alabama 36130
(334) 242-7941

For questions relating to reapportionment and redistricting, please contact:

Ms. Bonnie Shanholtzer
Supervisor
Legislative Reapportionment Office

Please Note: The above e-mail address is to be used only for the purposes of obtaining information regarding reapportionment and redistricting. Political messages, including those relative to specific legislation or other political matters, cannot be answered or disseminated to members of the Legislature. Members of the Permanent Legislative Committee On Reapportionment may be contacted through information contained on their Member pages of the Official Website of the Alabama Legislature.

Home

PREPARED STATEMENT OF LAUGHLIN MCDONALD, DIRECTOR, ACLU VOTING RIGHTS PROJECT, BEFORE THE NATIONAL COMMISSION ON THE VOTING RIGHTS ACT, MARCH 11, 2005

NATIONAL COMMISSION OF THE VOTING RIGHTS ACT REAUTHORIZATION
RESEARCH AND EDUCATION INITIATIVE

Montgomery, Alabama
March 11, 2005

The Voting Rights Act: What It Has Meant and What Is at Stake

by Laughlin McDonald
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The Segregated South was overthrown by many things - the formation of the Niagra Movement and later the NAACP in the early 1900s, black migration to the North following World War I, America's fight against Nazi racism during World War II and membership in the United Nations with its commitment to human rights, the abolition of the white primary in 1944, the desegregation of the Armed forces by executive order in 1948, the small but steady stream of Supreme Court decisions that chipped away at the doctrine of separate but equal and culminated in Brown v. Board of Education in 1954, the modern civil rights movement, the one person, one vote revolution of the early 1960s, and the Civil Rights Act of 1964. But nothing has transformed the Jim Crow South more than the Voting Rights Act of 1965. By throwing down the barriers to equal political participation, it removed the essential condition for maintaining the legal structure of segregation. As the Supreme Court has said, the equal right to vote is fundamental because it is "preservative of all rights."

The genius of the Voting Rights Act was not just that it abolished literacy and other tests for voting, which had been used

to deny blacks the right to vote. It also prohibited "covered" jurisdictions, which were mainly in the South, from implementing new voting practices without first preclearing them with federal officials and proving that they had neither a discriminatory purpose or effect. The preclearance process, known as Section 5, was bitterly denounced by many white Southern politicians as a "great injustice," a "yoke of disgrace," and an unwarranted intrusion on state sovereignty, or States' Rights.

But in South Carolina v. Katzenbach (1966), a challenge to the constitutionality of the Act brought by South Carolina, and joined by Alabama, Georgia, Louisiana, Mississippi, and Virginia, the Supreme Court held that the Act was a valid exercise of congressional power to enforce the equal voting rights guarantee of the Fifteenth Amendment. The Court subsequently construed Section 5 as having "the broadest possible scope" that reached any state enactment which altered the election law of a covered jurisdiction "in even a minor way."

When originally enacted, Section 5 was a temporary provision set to expire in 1970. Congress thought, in retrospect naively, that a five year "cooling-off" period would be enough to dissipate the long tradition of racial discrimination in voting in the covered jurisdictions. The reality proved to be far different. After conducting hearings, Congress continued Section 5 in 1970 for an additional five years, concluding that extension "is essential . . . in order to safeguard the gains in Negro voter registration thus far achieved, and to prevent future infringements of voting

rights based on race or color."

Opposition to the Act by white Southern politicians persisted. One of those who testified before Congress in 1970 was Georgia Governor Lester Maddox, who called the Act an "outrageous piece of legislation." It was "illegal, unconstitutional and ungodly and un-American and wrong against the good people in this country," and "phooey on anything that says otherwise." Ironically, his testimony no doubt helped persuade Congress that extension of Section 5 was indeed essential to safeguard minority voting rights.

Congress extended Section 5 again in 1975, concluding that while progress had been made minority registration and office holding were "modest and spotty," and that there was an extensive history of evading Section 5 by the covered jurisdictions. It was "imperative," according to a Senate report, that Section 5 be extended to apply to the redistricting that would take place after the 1980 census. Accordingly, Congress extended Section 5 for an additional seven years, until 1982.

Congress made other changes as well. It made the ban on literacy tests, which had initially applied only to the covered jurisdictions, permanent and nationwide. It also extended coverage of the Act to language minorities, defined as American Indians, Asian Americans, Alaskan natives, and those of Spanish heritage. As a result of the amendments, Alaska, Arizona, and Texas, and counties in California, Florida, Michigan, and South Dakota were added to the list of jurisdictions covered by Section 5. As well, 466 local jurisdictions across 31 states are now required to

provide bilingual election assistance.

Another equally important permanent provision of the Act is Section 2, a general prohibition on discrimination in voting that applies nationwide. In 1980, in City of Mobile v. Bolden, the Supreme Court held that Section 2, like the Fourteenth and Fifteenth Amendments, prohibited only intentional discrimination in voting. The combination of the new intent standard for Section 2 and the expiration of Section 5 in 1982 posed a serious threat to minority voting rights. In the absence of Section 5, covered jurisdictions could enact new and discriminatory voting practices that could only be challenged in litigation in which the plaintiffs would have the heavy burden of proving intentional discrimination. As a practical matter, most federal judges have been extremely reluctant to label local officials or communities as racists. As important, a legislative body can always provide a non-racial reason for enacting a new voting practice, regardless of the discriminatory impact that it might have.

Congress once again considered the extension of Section 5 in 1981-1982, as well as the amendment of Section 2 to incorporate a discriminatory "results" standard. And again, the amendments were opposed by some white Southern politicians. One of those who testified before Congress was Freeman Leverett, a former assistant attorney general of Georgia. He proudly recalled that he had argued on behalf of Georgia in South Carolina v. Katzenbach that the Voting Rights Act was unconstitutional. And disparaging the civil rights movement, he said the Act had been passed in 1965 "to

appease the surging mob in the street," and that Section 5 should be allowed to expire because "there is no longer any justification for it at all." A former U.S. attorney general, Griffin Bell, was reported in the press as saying that "I think you still need to protect the right to vote, but the preclearance argument is poppycock." A number of leaders in the civil rights community testified in favor of the extension of Section 5 and the amendment of Section 2.

Congress listened carefully to the witnesses who testified before it, and extended Section 5 in 1982 for an additional 25 years, the longest extension in the Act's history. As the Senate report concluded: "Continued progress toward equal opportunity in the electoral process will be halted if we abandon the Act's crucial safeguards now. . . . Without the preclearance of new laws, many of the advances of the past decade could be wiped out overnight with new schemes and devices." Those who study the modern record, as opposed to theorizing about color-blindness, will similarly conclude that Section 5 preclearance should be extended.

Much progress has indeed been made in minority voting rights and office holding in recent times, but it has been made in large measure <u>because of</u> the existence of Section 5 and the other provisions of the Voting Rights Act. One of the principal conclusions of <u>Quiet Revolution in the South: The Impact of the Voting Rights Act 1965-1990</u>, the most comprehensive study of the Act to date, was that the increase in minority office holding was the result of "the Voting Rights Act of 1965 and its 1982

amendments. Quite simply, had there been no federal intervention in the redistricting process in the South, it is unlikely that most southern states would have ceased their practice of diluting the black vote." The fact that Section 5 has been so successful is one of the arguments in favor of its extension in 2007, not its demise.

As important, the temptation to manipulate the law in ways that will disadvantage minority voters is as great and irresistible today as it was in 1982. The brief filed in the Supreme Court by the state of Georgia in Georgia v. Ashcroft (2003) provides a vivid, present day example of the willingness of one of the states covered by Section 5 to manipulate the laws to diminish the protections afforded racial minorities.

The issue in Georgia v. Ashcroft was whether the lower court properly denied preclearance under Section 5 to three of the state's proposed new senate districts drawn after the 2000 census. The court concluded that the new districts reduced the prior concentrations of black population to bare majorities causing "retrogression," or diminishing the opportunities of minority voters to elect candidates of their choice. The Supreme Court vacated the decision of the lower court because it had not, in its view, engaged in the correct analysis. According to the Supreme Court, the trial court should have taken into account the existence of so-called "influence" districts in which black voters, while they might not be able to elect candidates of their choice, could influence the election of white legislators who would be sympathetic to the interests of minority voters.

I have always thought that if "influence," as opposed to the ability to elect, was all that it was cracked up to be, whites would be clamoring to be a minority in as many districts as possible. Most whites would laugh at the suggestion, including those that convinced the Supreme Court in Miller v. Johnson (1995) that placing them in a white influence district, i.e., the majority black Eleventh Congressional District, was unconstitutional.

But far more important to minority voting rights than whether the three senate districts caused retrogression and should have been denied preclearance, were the arguments pressed by Georgia in its brief in the Supreme Court. The state resurrected the anti-Voting Rights Act rhetoric from prior years and argued that Section 5 "is an extraordinary transgression of the normal prerogatives of the states." State legislatures were "stripped of their authority to change electoral laws in any regard until they first obtain federal sanction." The statute was "extraordinarily harsh," and "intrudes upon basic principles of federalism." As construed by the lower court, the state said, Section 5 was "unconstitutional." But the arguments the state made about the districts at issue were far more hostile to minority voting rights than even its anti-Voting Rights Act rhetoric.

One of the state's arguments was that the retrogression standard of Section 5 should be abolished in favor of an "equal opportunity" to elect standard, which it defined as "a 50-50 chance of electing a candidate of choice." A 50-50 chance to win is also a 50-50 chance to lose. Given the fact that blacks are elected

primarily from majority black districts, if the state were allowed under Section 5 to adopt a plan providing minority voters with only a 50-50 chance of electing candidates of their choice in the majority black districts, the number of blacks elected to the legislature would be cut essentially in half. The Supreme Court rejected the state's invitation to rewrite Section 5.

The state argued further that a district provided an equal opportunity to elect when it contained only a 44% black voting age population. The adoption of that standard would have permitted the state to abolish all of its previously majority black districts. It would also have turned blacks into second class voters, with bloc voting white majorities controlling most, if not all, of the legislative districts.

Georgia further demonstrated its disregard for minority voting rights in Georgia v. Ashcroft by arguing that minorities should never be allowed to participate in the preclearance process. Thus, the very group for whose protection Section 5 was enacted would have no say on how a proposed change might impact the minority community. The Supreme Court rejected the state's argument.

Are the interests of minority voters adequately protected by a state such as Georgia, which advocates repeal of the retrogression standard, the abolition of majority-minority districts, and the exclusion of minorities from the Section 5 preclearance process? The answer is surely "no," unless the southern fox should now be left to guard the voting rights hen house. We need to continue the protection afforded by Section 5.

PREPARED STATEMENT OF THEODORE SHAW, DIRECTOR OF COUNSEL, NAACP LEGAL DEFENSE AND EDUCATIONAL FUND, BEFORE THE NATIONAL COMMISSION ON THE VOTING RIGHTS ACT, JUNE 13, 2005

National Commission on the Voting Rights Act

Testimony of the NAACP Legal Defense and Educational Fund, Inc.

June 13, 2005

Introduction

Good morning, I am Theodore Shaw, Director of Counsel at the NAACP Legal Defense and Educational Fund, Inc. ("LDF"), and it is a pleasure to deliver testimony today at the invitation of this National Commission on the Voting Rights Act.

LDF has been a pioneer in the efforts to secure and protect minority voting rights in the United States, particularly those of African Americans. LDF has been involved in nearly all of the precedent-setting litigation relating to minority voting rights over many decades, including cases abolishing white primaries, creating and/or defending the first majority-African-American congressional and state legislative districts in several states, and eliminating barriers to black voter participation and office-holding. LDF also played a major advocacy role in working toward the enactment of the Voting Rights Act ("VRA") of 1965 and has been involved in every major legislative and administrative voting rights issue since, including the development, passage, implementation and defense of the 1982 amendments to the Voting Rights Act and the National Voter Registration Act of 1993.

LDF co-chairs the New York Voting Rights Consortium ("NYVRC"), a group of New York minority voting rights advocates that includes the Community Service Society of New York, the Center for Law and Social Justice at Medgar Evers College, the Asian American Legal Defense and

Education Fund, Inc., the Puerto Rican Legal Defense and Education Fund, Inc., LDF and certain independent practitioners and voting rights experts. In addition, NYVRC has been active in monitoring and/or challenging various issues affecting race and language minority voters in New York City.

Overview

My focus today will be to offer testimony regarding New York City's experience under Sections 5 and 203 of the VRA which bears significantly on but does not exhaust the evidence that supports renewal. Since 1974, New York municipal and state governments have attempted nineteen times to make electoral changes that the U.S. Department of Justice's Civil Rights Division found to have a retrogressive effect on minority voting rights. In other words, but for the protections of Section 5, eighteen[1] voting changes that had a discriminatory impact would have had the force of law. Proposed changes blocked under Section 5 have included dilutive redistricting plans, inadequate translation services, removal of polling places from minority neighborhoods, unilateral suspension of minority-elected bodies, and even end-runs around the state constitution.

On March 15, 1965, as President Lyndon Johnson sent the Voting Rights Bill to Congress, he told the nation, "[E]ven if we pass this bill, the battle will not be over . . . I know how difficult it is to reshape the attitudes and the structure of our society." Examination of the record bears out President Johnson's prediction: though Section 5 objections have played a significant role in supporting minority voting rights in New York, the job is far from finished. New York has

[1]One DOJ objection, of December 5, 1994 (see Appendix A), was overturned in federal district court, despite the state's concession that the system in question for electing judges was racially discriminatory. (*N.Y. v. U.S.*, 874 F. Supp. 394 (D.D.C. 1994)).

continued to propose discriminatory voting changes since the time it first became subject to Section 5 in 1970, and since the last reauthorization of Section 5 and 203 in 1982 and 1992 respectively. Indeed, consistent with the pattern in many other covered jurisdictions, while some methods persist, minority vote dilution also takes on new forms as the minority population itself grows and changes.

New York City is not the first jurisdiction that many think of when the subject of voting discrimination is raised, and indeed many remain unaware that three counties in New York City are covered under Section 5. But, as we will set forth in greater detail below, the experiences of minority voters in the covered counties in New York City underscore three points that militate strongly in favor of the renewal of Section 5 of the Voting Rights Act and the language access provisions of Sections 4 and 203[2]. First, as my testimony will illustrate, the pattern of proposing discriminatory voting changes continues even 40 years after the historic VRA was passed and nearly 30 years after three New York City counties were brought under the Act's preclearance requirements. Second, in jurisdictions with multiple and growing minority populations, complex voting processes provide many opportunities for discrimination. Third, contrary to widely held assumptions that Section 5 protects only African-Americans while the VRA's language access provisions stand in isolation protecting only language minorities, the reality is that both symbolically and practically, the VRA creates an integrated minority protection program.

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[2]Sections 4(f)(4) and 203 require that "registration or voting notices, forms, instructions, assistance, or other materials of information relating to the electoral process, including ballots" must be provided "in the language of the applicable minority group as well as in English." (42 U.S.C. 1973b(4)(f)(4) (2005)).Section 4(e) bars English literacy tests as a condition of voting eligibility for "persons educated in American-flag schools in which the predominant classroom language was other than English." (42 U.S.C. 1973b(4)(e) (2005)).

History of Section 5 Coverage of New York

Section 5 coverage of New York, Kings, and Bronx Counties began in 1970, when Congress extended Section 5 coverage to those jurisdictions that had maintained literacy tests for voting eligibility as of November 1, 1968, and where less than 50 percent of the voting population was registered on that date or voted in the 1968 election. New York State had maintained an English literacy test since 1923 that withheld the vote from thousands of otherwise eligible New Yorkers of Puerto Rican origin. When such tests were banned by Section 4(e) of the VRA in 1965, New York led the drive to overturn the ban, filing suit in federal court to preserve its disfranchisement of Puerto Rican voters. The state lost in the Supreme Court in 1966, and was forced to allow its otherwise eligible linguistic minorities to vote.[3]

In July 1970, the Attorney General filed a determination that New York's English literacy requirement was a "test or device" that adversely impacted minority voting participation, as required by the Section 5 triggering formula.[4] Eight months later in March, 1971, the U.S. Bureau of Census reported that fewer than 50% of voting age residents were registered in Bronx, Kings and New York counties. Together these two findings resulted in those three counties becoming "covered" jurisdictions subject to pre-clearance under Section 5 of the Voting Rights Act.

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[3] *Katzenbach v. Morgan*, 384 U.S. 641 (1966).

[4] 42 U.S.C. 1973b(5).

The Impact of Section 5 Since 1982

In New York City since 1982, Section 5 objections have helped prevent minority vote dilution in three broad areas: redistricting, non-geographical election procedures (voting rules, election control, suspension of elected bodies, etc.), and barriers to political access for linguistic minorities. The scope of these categories is significant: their breadth touches virtually every aspect of the vote.

Redistricting

Since the 1982 reauthorization, the Department of Justice has used Section 5 objections six times against proposed municipal, state, and federal redistricting plans that would have diluted minority voting power (see Appendices A & B). Each individual objection to each redistricting plan in fact cited multiple harms to minority communities across the city, so that dozens of discriminatory changes in total were stopped by Section 5 objections. Under both Democratic and Republican Presidents, three Departments of Justice have stopped discriminatory voting changes in neighborhoods that reach across New York City, including Williamsburg, East and West Harlem, Flatbush, Bushwick, Cypress Hills, East New York, Fordham Road, Morris Heights, Inwood, Washington Heights, Williamsbridge, Wakefield, University Heights, and Union Port. With the support of Section 5 objections, many of these neighborhoods have become important bases for minority voting power. Without the protections of Section 5, the landscape would look dramatically different. Among the proposed voting changes were plans that would have:

- gerrymandered the central Bronx into a 174-sided State Senate district to consolidate white voting power in 1982 while fragmenting that neighborhood's Black and Hispanic

majority in a way described as "particularly offensive" by President Reagan's Assistant Attorney General Wm. Bradford Reynolds;[5]

- cannibalized Black Congressional districts in Williamsburg and Bushwick in order to allow for a Hispanic district, so that the political gains of one group could come only at the expense of the other, while white neighborhoods would have been left uncontested;[6]
- again over-concentrated the northern Brooklyn Hispanic vote in one City Council district in Williamsburg in 1991, this time at the expense of other Hispanic voters in Bushwick and Cypress Hills;[7]
- over-concentrated the minority vote into 80%-minority districts across the city, drastically reducing the number of majority-minority districts in the covered areas;[8]
- created a supposedly "Hispanic" City Council district in which the DOJ determined that Hispanic voters would "not be able to elect a candidate of their choice;" [9]
- further minimized Hispanic voting strength in northern Manhattan by splitting the Hispanic population there into two separate Assembly districts in 1992;[10]

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[5]Letter from Wm. Bradford Reynolds, Assistant Attorney General, Civil Rights Division, U.S. Department of Justice, to Thomas P. Zolezzi, Special Counsel, N.Y. State Board of Elections 4 (June 22, 1982).

[6]Id. at 2.

[7]Letter from John R. Dunne, Assistant Attorney General, Civil Rights Division, U.S. Department of Justice, to Judith Reed, N.Y.C. Districting Commission 2 (July 19, 1991).

[8]Letter from Reynolds to Zolezzi of 6/22/1982, at 3.

[9]Letter from Dunne to Reed of 7/19/1991, at 3.

[10]Letter from James P. Turner, Assistant Attorney General, Civil Rights Division, U.S. Department of Justice, to Hon. Dean Skelos and Hon. David Gantt, Legislative Task Force on

These are not the only retrogressive redistricting changes blocked in New York under Section 5 (see Appendices A & B). Significantly, in 1982, the same year as the last VRA reauthorization, the Department of Justice found that state redistricting would have reduced the number of Assembly districts in New York City in which minority voters had a reasonable chance to elect the candidates of their choice from 43% to 35%, at a time when the minority population of New York City was growing rapidly.[11] This phenomenon – dilution in response to perceived political threats from expanding minority communities – is not uncommon, and is checked by Section 5. Through Section 5 preclearance review, the DOJ was able to prevent such dilutions.

New York City provides a unique opportunity to observe starkly the impact of Section 5 by comparing Kings, New York, and Bronx Counties, all of which have been covered under Section 5 since 1970, with Queens County, which has never received Section 5 protections. In Queens, where redistricting plans are not subject to the scrutiny of preclearance review, pressure to protect white incumbents from dramatic demographic changes has wrought a districting pattern that, according to former Assistant Attorney General John R. Dunne, "consistently disfavored the Hispanic voters."[12] Additionally, though all State Senate districts in New York City are overpopulated (i.e. individual votes are diluted), Queens County districts are twice as overpopulated as Kings, New York and Bronx counties.[13] If Section 5 is allowed to expire, we

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Demographic Research and Reapportionment 2 (June 24, 1992).

[11]Letter from Reynolds to Zolezzi of 6/22/1982, at 3.

[12]Letter from Dunne to Reed of 7/19/91 at 3.

[13]PETER WAGNER, IMPORTING CONSTITUENTS: PRISONERS AND POLITICAL CLOUT IN NEW YORK (2002), *at* http://www.prisonpolicy.org/importing/importing.shtml.

could expect that pattern to become the norm across all of New York City.

Non-Geographic Vote Dilution

Although the political stakes and visible consequences of redistricting attract the most public attention, redistricting has not been the only form of attempted vote dilution impacted by Section 5. Just as redistricting became a popular mechanism for diluting minority votes after outright vote denial became more difficult, other forms of minority vote dilution have continued or mutated over the past two decades. For example:

- In 1994, the state attempted an end-run around the entire electoral process by proposing to allow the Governor to appoint judges to the Court of Claims and then immediately transfer them to the Supreme Court. The Civil Rights Division struck down this proposal under Section 5, noting that "The state thus effectively has changed the method of selecting a class of Supreme Court judges from election to appointment."[14]
- In 1996, Section 5 allowed the Civil Rights Division to intervene when the Schools Chancellor dismissed nine minority Community School Board members elected by a 90% minority district and replaced them with unilaterally chosen political appointees.[15] Though Community School Boards have since been disbanded in New York City (a voting change that was itself subject to Section 5 and was precleared over the objections of minority voting advocates), this incident demonstrated the continuing power of Section 5 to ensure that "centralization" does not mean local disfranchisement of minority voters.

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[14]Id. at 3.

[15]Letter from Deval L. Patrick, Assistant Attorney General, Civil Rights Division, U.S. Department of Justice, to Judith Kay, First Deputy Counsel to the Chancellor, N.Y.C. Bd. of Education (Nov. 15, 1996).

- Still more recently, the Federal Government blocked a proposed 1999 change to limited-voting in school board elections.[16] Limited-voting is a classic "anti-single-shot" strategy used throughout the South to dilute minority voting power by preventing minorities from casting their votes in blocs. As the Chair of this Commission may recall, as Acting Assistant Attorney General for Civil Rights you determined that this change would have made it three times as hard for minorities to elect candidates of their choice in New York City school board elections.[17]

It is well-documented that the framers of the VRA and its amendments anticipated exactly this kind of "pour[ing] old poison into new bottles"[18], and so deliberately designed Section 5 to "shift the advantage of time and inertia from the perpetrators of the evil to its victims."[19] The experience of New York shows that this prophylactic scrutiny is still needed to help the federal government "shine the lights on" examples of adaptive and persistent discrimination.

Access for Linguistic Minorities

Section 5 remains a robust tool to support the political participation of linguistic minorities. The DOJ has used Section 5 in concert with Section 203 repeatedly to object to voting changes that would have had a discriminatory effect on linguistic minorities' access to the

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[16]Letter from Bill Lann Lee, Acting Assistant Attorney General, Civil Rights Division, U.S. Department of Justice, to Eric Proshansky, Assistant Corporation Counsel, City of New York (Feb. 4, 1999).

[17]Id. at 2.

[18]*Reno v. Bossier Parish*, 528 U.S. 320, 366 (2000)

[19]*South Carolina v. Katzenbach*, 383 U.S. 301, 328 (1966)

electoral process. For example, so half-hearted was New York City's original Chinese language translation plan that Acting Assistant Attorney General James P. Turner noted in 1993 that it showed no awareness that there were multiple Chinese dialects spoken in the city.[20] In addition, the proposed plan had "no procedure for assessing the language abilities of the translators, nor a program to train the interpreters for their translation skills."[21] Until the DOJ intervened under Section 5, the City's plan was to send one untrained interpreter to each polling place, no matter how many Chinese speakers needed translation services in that district. In one district, a single interpreter would have had to serve 2629 Chinese-speaking voters.[22] In addition, before the DOJ objected, the city's plan was to provide no translation services at all for districts with fewer than 200 voting-age Chinese residents who in the city's estimation spoke English less than well; the DOJ noted that this plan would leave half of New York's Chinese-speaking voters without any translation services at all.[23] A year later, though the city had complied with the letter of the 1993 objections, the DOJ was compelled to object *yet again* because the city was translating everything *except* candidates' names on the ballots to be filled out by Chinese-speaking voters.[24]

In keeping with the history of discrimination against linguistic minorities, which initially

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[20]Letter from James P. Turner, Acting Assistant Attorney General, Civil Rights Division, U.S. Department of Justice, to Blaise Parascandola, Acting General Counsel, Board of Elections 2 (Aug. 9, 1993).

[21]Id.

[22]Id. at 3.

[23]Id. at 2.

[24]Letter from Deval Patrick, Assistant Attorney General, Civil Rights Division, U.S. Department of Justice, to Kathy King, General Counsel, Board of Elections (May 13, 1994).

brought New York under the coverage of Section 5, election officials have persisted in sacrificing linguistic minority communities for the sake of expediency – for example, by failing to inform them of one-time changes such as election date rescheduling or additions to the ballot.[25] The portion of New York City residents who speak a language other than English at home has only increased since 1982, reaching 47.6% of all New Yorkers by the 2000 Census. Without the scrutiny demanded by Sections 5 and 203, a critical number of linguistic minorities could face new barriers to the exercise of their fundamental right to vote.

Deterrence and Educative Functions of the VRA

The constant presence of Section 5 scrutiny deters discriminatory voting changes even before they are proposed, though this effect is of course less visible than instances of outright objection.[26] The existence of Section 5 also empowers citizens to challenge voting changes. In 1981 voters took New York City to court under Section 5 when the city tried to pass a major redistricting and polling-place relocation plan without pre-clearance.[27] The plaintiff-voters obtained an injunction against the plan under Section 5, forcing the city to submit the plan for pre-clearance, leading to the DOJ finding numerous instances of discrimination.[28]

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[25]Letter from Wm. Bradford Reynolds, Assistant Attorney General, Civil Rights Division, U.S. Department of Justice, to Jack W. Hoffman, Deputy General Counsel, State Board of Elections 3 (Sept. 18, 1981).

[26]In addition, short of interposing an objection, the DOJ can issue a "more information" letter, which points out deficiencies in the submission and calls for the jurisdiction to provide supplementary information. Occasionally, jurisdictions cure or withdraw a change in response.

[27]*Herron v. Koch*, 523 F. Supp. 167 (2d Cir. 1981).

[28]Letter from Wm. Bradford Reynolds, Assistant Attorney General, Civil Rights Division, U.S. Department of Justice, to Fabian Palomino, Counsel, N.Y. City Council Redistricting Comm'n (Oct. 27, 1981).

The Section 5 process with DOJ also helps educate state and municipal officials as to how best to meet their duties under the Voting Rights Act generally. For example, following objections to the state's 1982 redistricting plan, then-Speaker of the New York State Assembly Stanley Fink exchanged letters with Assistant Attorney General Wm. Bradford Reynolds, seeking advice on how best to redraw several district lines so as to be in keeping with the VRA.[29] It is hard to imagine such a dialogue occurring without the stimulus of Section 5 as an educative tool.

Conclusion: Continuing Necessity

The need for Section 5 support of minority voting rights in New York has not declined since 1982. In fact, of the nineteen times the Civil Rights Division has made Section 5 objections in New York, eleven occurred since 1982, the year of the last VRA reauthorization. Essentially, the DOJ has found *just as much discrimination since 1982 as in the years prior.* Multiple Assistant Attorneys General, serving under Republican and Democratic Presidents, have noted the persistence of racially polarized voting in New York.[30] Geographic segregation by race in New York is significantly higher than the national average, reflecting the existence of continued impediments.[31] And, in stark contradiction to assertions that "the job is finished,"

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[29]Letter from Wm. Bradford Reynolds, Assistant Attorney General, Civil Rights Division, U.S. Department of Justice, to Hon. Stanley Fink, Speaker, N.Y. State Assembly (June 28, 1982).

[30]See e.g. Letter from James P. Turner, Assistant Attorney General, Civil Rights Division, U.S. Department of Justice, to Hon. Dean G. Skelos and Hon. David F. Gantt, New York State Legislative Task Force on Demographic Research and Reapportionment 3 (June 24, 1992); Letter from Loretta King, Acting Assistant Attorney General, Civil Rights Division, U.S. Department of Justice, to G. Oliver Koppell, Attorney General, State of N.Y. 2 (December 5, 1994).

[31]THE DRUM MAJOR INSTITUTE, PEOPLE AND POLITICS IN AMERICA'S BIG CITIES: THE CHALLENGES TO URBAN DEMOCRACY 27 (2004)

minorities still hold a disproportionately low number of political seats in New York.[32] While the VRA does not require proportional representation, the fact that current Latino and Asian political representation is only now becoming proportionate to those groups' population share of *twenty years ago* reflects the slow pace of progress.[33] With voting strength lagging population by twenty years and new obstacles to voting and forms of vote dilution continuing to spring up, the *ex ante* scrutiny and protection provided by Section 5 are as necessary now as they were in 1982.

[32]Id.

[33]Id.

Appendix A: Chronological Table of Section 5 Objections

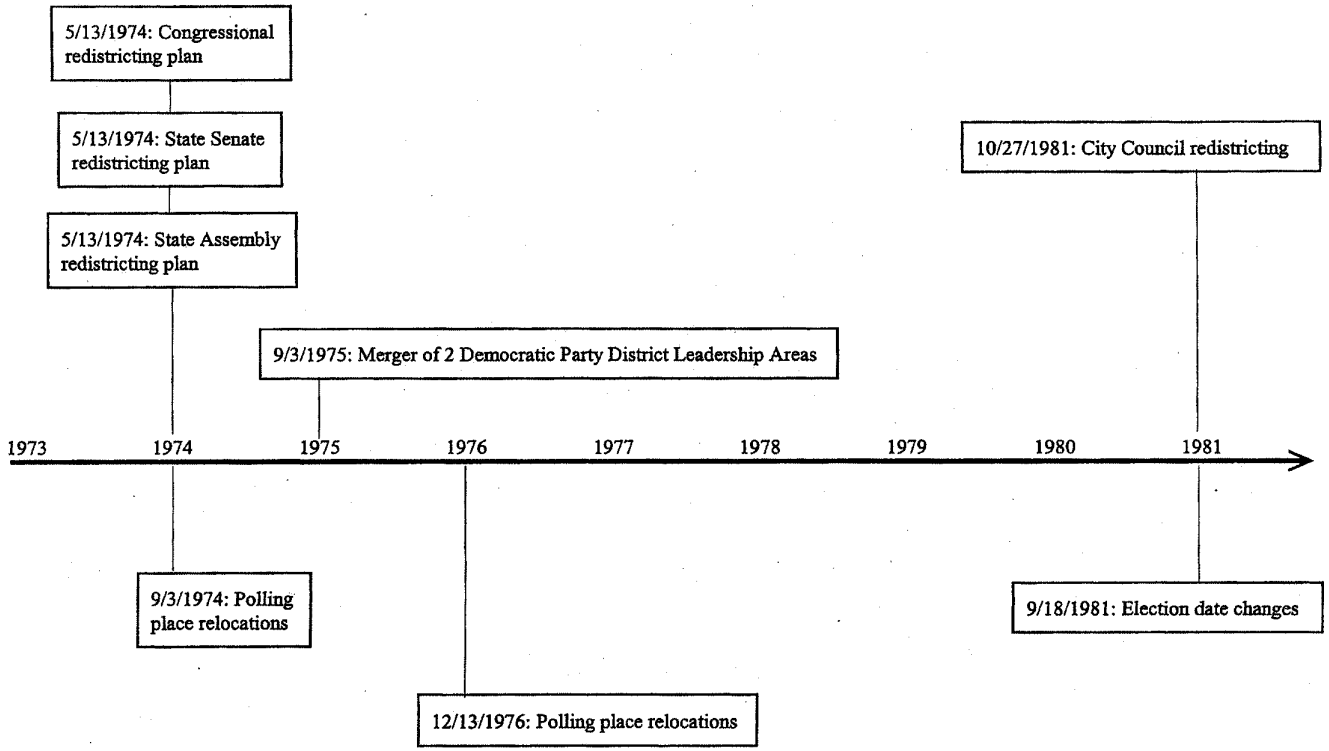
Date	Type of Local or State Submission	Basis for Objection	Ass't Attorney General
Apr. 13, 1974	Congressional redistriction plan	• Over-concentrated Black neighborhoods in northern Brooklyn into one district, while fragmenting other minority concentrations into surrounding white districts	J. Stanley Pottinger
Apr. 13, 1974	State Senate redistricting plan	• Over-concentrated Black neighborhoods in northern Brooklyn into one district while adjacent minority communities were diffused into surrounding white districts • Diluted minority vote in West Harlem by biting off minority neighborhood and adding to adjacent majority white district on Upper West Side	J. Stanley Pottinger
Apr. 13, 1974	State Assembly redistricting plan	• Over-concentrated minority neighborhoods in Williamsburg area, while diffusing adjacent minority vote into white districts • Diluted Black and Puerto Rican vote in Upper Manhattan and the Bronx, including gerrymandering one district in Washington Heights/Inwood so that it was four miles long in order to reduce its minority portion to 46%	J. Stanley Pottinger
Sept. 3, 1974	Polling place relocation	• Polling places moved from public schools in minority neighborhoods to predominantly white, middle-class housing projects in the East Village and on the Lower East Side, diminishing minority access to polls	J. Stanley Pottinger
Sept. 3, 1975	Merger of 2 Democratic Party District Leadership Areas	• Merger diluted minority vote by submerging one district of high minority concentration into a predominantly white district	J. Stanley Pottinger
Dec. 13, 1976	Polling place changes	• Reiteration of 9/3/1974 objection, which NY City Board of Elections had not yet acted upon; Assistant Attorney General noted that "the Board of Elections had made a practice of locating polling places in [lower Manhattan] in large, predominately [sic] white housing projects"	J. Stanley Pottinger

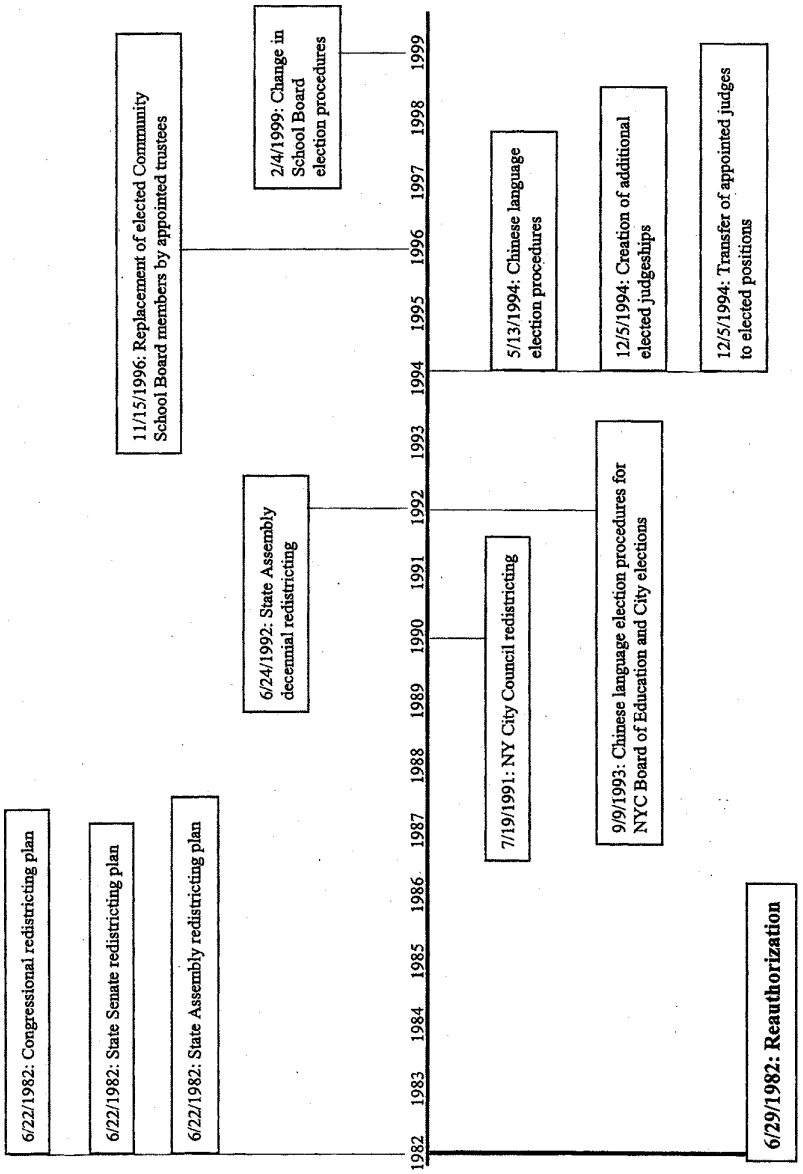
Sept. 18, 1981	Election date changes	• Contradicting an earlier promise, state attempted to schedule some primary elections so that they would occur before the AG had time to pre-clear or object to City Council redistricting plan then under Section 5 review (see below) • DC district court had enjoined holding City Council elections until redistricting was pre-cleared (*Herron v. Koch*) • Changes in election schedule were not well-publicized in Spanish-language communities	Wm. Bradford Reynolds
Oct. 27, 1981	City Council redistricting plan	• Racial gerrymandering contributed to fragmenting of minority vote, including o proposed Manhattan district 6 miles long and only 3 blocks wide, in order to merge minority concentrations in West Harlem and Morningside Heights into majority white Upper West Side district o proposed district in Brooklyn 5 miles long and only ½ mile wide, "result[ing] from efforts to maintain [a] neighboring district as a district which would be controlled by white voters" o unnecessary fragmentation of minority voters in East New York o minority voters in Morris Heights-Fordham neighborhoods fragmented among 4 districts; to accomplish this, one Northeast Bronx district was gerrymandered "in a convoluted manner" • The City insisted on using 1970 census data, despite availability of 1980 census data • AG noted persistence of racial bloc voting	Wm. Bradford Reynolds
June 22, 1982	Congressional redistricting plan	• Gerrymandered north Brooklyn so that a new majority-Hispanic district would come at the expense of neighboring Black districts without ceding any white power • State rejected available alternative plans that would maintain both Hispanic and Black districts at the expense of white districts	Wm. Bradford Reynolds
June 22, 1982	State Senate redistricting plan	• Plan was "particularly offensive and needlessly fragments minority concentrations" in the Bronx, including one district gerrymandered to have 174 sides • Fragmented minority vote in East New York and Flatbush • Creation of Bronx-Manhattan inter-borough districts further diluted Hispanic vote, costing a probable Hispanic Assembly seat	Wm. Bradford Reynolds

June 22, 1982	State Assembly redistricting plan	• Reduced minority-majority districts from 43% to 35% of covered area • State attempted to over-concentrate Blacks and Hispanics into 80%-minority districts, instead of standard 65% • Significant minority population in Williamsbridge-Wakefield divided by districts of "irregular configuration" • "needless fragmentation" of Hispanic population in University Heights, Union Port, south Bronx, and northern Brooklyn	Wm. Bradford Reynolds
July 19, 1991	City Council redistricting plan	• Over-concentration of Hispanic vote in Williamsburg, at the expense of Hispanic vote in Bushwick and Cypress Hills, in order to protect an incumbent • Supposedly Hispanic-majority district in East Harlem/South Bronx, but Hispanic voters "will not be able to elect a candidate of their choice" • City had rejected available alternative plans • Though Queens County is not covered by Section 5, objection noted that redistricting there confirmed a pattern that "consistently disfavored the Hispanic voters," supporting DOJ's assessment that changes in covered counties were based on discriminatory purpose	John R. Dunne
June 24, 1992	State Assembly redistricting plan	• Unnecessarily split upper Manhattan Hispanic population between two districts • AG noted continuing "prevailing patterns of polarized voting"	James P. Turner
Aug. 9, 1993	Chinese language election procedures for NYC Board of Education and City elections	• Missed 50% of Chinese voting population by ignoring districts with less than 200 voting-age Chinese speakers • Took no account of different Chinese dialects • No training or assessment of translators • Would send one translator to each district, regardless of number of Chinese-speakers needing services there • No translation program at all for Queens (not a covered area under Section 5, but covered under section 203)	James P. Turner
May 13, 1994	Chinese language election procedures	• City refused to provide translations of candidates' names, despite confusion among Chinese language voters	Deval L. Patrick

Dec. 5, 1994	Creation of additional elected judgeships	• State task force had found existing method of electing judges to be controlled by a handful of disproportionately white political insiders (slate was set by Democratic Party convention, and public vote was "mere ratification") • State had maintained 10 un-precleared "elected" judgeships for twelve years, during which time not a single judge on those seats was a minority. Now that these seats were at risk of objection, selection process was changed so that only minority judges were designated to sit in the at-risk seats. • AG noted "pattern of racially polarized voting which characterizes elections in the covered counties in New York City"	Loretta King
Dec. 5, 1994	Transfer of unelected judges to elected positions	• State attempted to circumvent state constitutional requirement that Supreme Court judges be elected, by appointing judges to Court of Claims and then immediately transferring them to Supreme Court	Loretta King
Nov. 15, 1996	Replacement of elected Community School Board members by appointed trustees	• Removed 9 officials - 2 Black, 7 Hispanic - elected by district that was 54% Hispanic and 36% Black, and replaced them with political appointees, with no community input	Deval L. Patrick
Feb. 4, 1999	Change in School Board election procedures	• Change from single-transferable-vote procedure (voter ranks candidates in order of preference) to limited voting (voter casts one vote for up to four candidates) made it three times as hard for minorities to elect candidates of their choice	Bill Lann Lee

Appendix B: Section 5 Objection Timeline




6/22/1982: Congressional redistricting plan
6/22/1982: State Senate redistricting plan
6/22/1982: State Assembly redistricting plan
6/24/1992: State Assembly decennial redistricting
11/15/1996: Replacement of elected Community School Board members by appointed trustees
2/4/1999: Change in School Board election procedures
7/19/1991: NY City Council redistricting
9/9/1993: Chinese language election procedures for NYC Board of Education and City elections
5/13/1994: Chinese language election procedures
12/5/1994: Creation of additional elected judgeships
12/5/1994: Transfer of appointed judges to elected positions
6/29/1982: Reauthorization
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PREPARED STATEMENT OF JOSÉ GARCIA, INSTITUTE FOR PUERTO RICAN POLICY AND THE LATINO VOTING RIGHTS NETWORK, BEFORE THE NATIONAL COMMISSION ON THE VOTING RIGHTS ACT, JUNE 14, 2005

LATINOS AND THE VOTING RIGHTS ACT:
THE CONTINUING NEED FOR VOTER PROTECTION

Testimony
by
José A. García
Institute for Puerto Rican Policy (IPR)
and the
Latino Voting Rights Network

Presented at the
Northeast Regional Hearing
of the
National Commission on the Voting Rights Act
Examining the Degree of Racial Discrimination in Voting and the Impact of the Voting Rights Act since 1982
Tuesday, June 14, 2005
Association of the Bar of the City of New York

Good afternoon. I am José A. García and I am here to testify on behalf of the Institute for Puerto Rican Policy and the Latino Voting Rights Network that the Institute coordinates. The Institute for Puerto Rican Policy was established in New York City in 1982 as a nonprofit and nonpartisan policy center focusing on Latino issues and I am their Vice President for Policy. Since our inception we have worked to protest the voting rights of Latinos and other people of color as part of our Civic Participation Program.

Based on our more than two decades of experience working with Latino communities throughout the East Coast and the Caribbean on voting rights issues, we can testify to the continuing importance of the federal Voting Rights Act to protecting the right of Latinos to fully participate in this country's electoral system. We support the reauthorization and expansion of the following sections of the Voting Rights Act that are scheduled to sunset in 2007:

1. Section 5 preclearance provisions
2. Section 203 bilingual ballot access protections, and
3. The examiner and observer provisions that authorize the DOJ to appoint an examiner or send observers to any jurisdiction covered by Section 5.

The Latino Voting Rights Network is a coalition of local Latino Voting Rights Committees in eight states on the East Coast and individuals and organizations in other areas of the country, including Puerto Rico and the US Virgin Islands. The states we in which we have been working are Connecticut, Delaware, Florida, Maryland, Massachusetts, New Jersey, New York, Pennsylvania, and Rhode Island. Our goal has been to democratize the redistricting process and educate our community on the uses of the Voting Rights Act in assuring their full participation in the electoral system.

The Census Bureau recently issued estimates that Latinos in 2004 numbered over 41 million, or 1 in 7 residents of the United States. They reported that the Latino population grew by 3.6 percent in one year, more than three times that of the total population (1.0 percent). For Latinos, this growth was for the first time since the 1990s driven mostly by birth rates and not immigration. About two-thirds of Latinos are of voting age and about 60% are U.S.-born.

Latinos are a diverse population on the basis of national-origin, immigration status, nativity, language usage and in many other ways. The Voting Rights Act impacts on these different segments of this community in different and important ways. While nationally, the largest segment of the Latino population is Mexican, on the East Coast the Caribbean it is in the majority Puerto Rican and Dominican.

Puerto Ricans, who migrate to the United States from the US territory of Puerto Rico, have been US citizens since 1917 by an act of the US Congress and have been coming to the US during this entire period. This status has created certain special language rights for those born in Puerto Rico who attended "American flag: schools where instruction was primarily in Spanish. These are embodied in the Voting Rights Act under Section 204e. Along with Mexican-Americans, Puerto Ricans were among the original Latino groups covered by the Voting Rights Act as being historically discriminated against electorally.

Dominicans, Ecuadorians, Mexicans, Colombians and other Latinos are more recent immigrants to the US from foreign countries. These more recent arrivals have significant

hurdles to voting in the US that include citizenship status and language. These groups are discriminated against in the electoral process by virtue of being "nonwhite," their national-origin and being language minorities.

At the same time, while Puerto Ricans have been residing in a city like New York for more that 150 years, in the 1990s they and other groups like Dominicans grew in large numbers in smaller cities and towns that had no history with large Latino populations. While in large cities like New York, Hartford, Philadelphia and Boston these communities have developed some experience in applying the Voting Rights Act, in the smaller cities and towns with emerging Latino populations, these protections have been introduced more recently in the face of rising first-generation civil rights violations at the voting booths, in employment, housing, education and other areas that has resulted in high levels of Latino segregation.

In sections of New York City and other large cities, the Voting Rights Acts has demonstrated its effectiveness in protecting the rights of Latinos to vote and elect candidates of their choice. In New York City alone, there are 23 Latino elected officials at the local, state and federal levels, most elected in the three counties of the city covered by Section 5 of the Voting Rights Act. However, the newer and fastest-growing Latino communities in the county of Queens, which is not covered by Section 5, have been increasingly requesting Section 5 protections like their neighbors.

The challenge for the 2007 reauthorization is how to continue these protections in the larger cities where needed, and at the same time aggressively apply these protections to the emerging Latino communities in the smaller cities and towns, as well as part of and suburban sections of the large cities where Latinos face more direct voter discrimination and intimidation. While when first adopted the Voting Rights Act's application appeared more straightforward, its reauthorization is occurring in a more complex and challenging context.

The members of the Latino Voting Rights Network have reported over time a recurring set of policies and practices that have undermined the voting rights of Latinos. These have included such things as:

- Racial gerrymandering in the redistricting process, including packing and splitting districts in Latino neighborhoods;
- Municipalities ignoring the requirement that the redistrict their political divisions every ten years based on the new Census results;
- The exclusion of Latinos from the decisionmaking process in the setting of redistricting rules, procedures and practices;
- Not providing notices in Spanish and in the Spanish-language media about public hearings and other aspects of the redistricting process;
- The lack of notices in poll places in Spanish and the lack of Spanish-language poll workers;
- The training of poll workers to identify foreign-looking and sounding voters to single out in order question their eligibility to vote;
- The use of off-duty police and other law enforcement personnel as poll watchers in Latino areas;
- The use of the media to spread rumors that illegal aliens caught trying to vote will be deported presented indirectly as a threat to Latinos who are citizens not to vote;
- The direct harassment by government officials and election administrators of Spanish-speakers to "learn English" or "go back to your own country" to deny them the right to vote or raise objections;
- The automatic denial of the right to register to vote if the place of birth is a Latino American country or even the US territories of Puerto Rico or the US Virgin Islands; and
- The moving, with no notice, of polling places to inconvenient locations for Latinos.

The Latino Voting Rights Network, with the support of the Institute for Puerto Rican Policy and the Puerto Rican Legal Defense and Education Fund, is sponsoring a conference in November to bring together Latino voting rights activists from the East Coast and throughout the country to, among other things, systematically document

these voting rights violations and the positive role that the Voting Right Act has played in protecting those rights. The Voting Rights Act continues to be an important tool in assuring the full participation of the Latino community in the electoral process and our organization is committed to make the case for it continuing relevance to our community and other communities of color. By assuring that the voting rights of Latinos are protected, the Voting Rights Act also protects the integrity of the electoral process for all Americans.

Thank you for the opportunity to express our views on the Voting Rights Act today.

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Jose R. Sanchez, Ph.D.
Chairperson

Angelo Falcón
President

PREPARED STATEMENT OF THE HONORABLE DAVID PATTERSON, NEW YORK STATE SENATE MINORITY LEADER, BEFORE THE NATIONAL COMMISSION ON THE VOTING RIGHTS ACT, JUNE 14, 2005

COMMENTS BY SENATOR PATERSON

I am here today to express my firm support for the re-authorization of Section 5 of the Voting Rights Act. For the past 40 years, Section 5 has been an important tool in safeguarding the voting rights of minority voters. Although we as a nation have certainly made great strides during the past four decades towards greater inclusiveness and pluralism in our representative institutions, much work remains to be done. Racial bloc voting remains a common pattern in many if not most jurisdictions. It is imperative that the courts, the executive branch, and the people themselves retain the ability to use the Section 5 preclearance mechanism to root out and prevent the enactment of those electoral devices and practices that have the purpose or effect of diluting minority voting strength.

That said, I think it is important to underscore that Section 5 is not the only tool, or even the best tool, for safeguarding the voting rights or minority voters. Section 5, after all, is more about procedure than substance. As it has been interpreted by the United States Supreme Court, Section 5 prohibits the enactment of a new election practice or procedure that would cause a "retrogression" in minority strength – that is, a change that would cause minority voters to be worse off than they had been before. In essence, this approach freezes in place the level of representation that a minority community has attained, and prevents that level of representation from being eroded by future changes to voting practices or procedures. That is certainly a good thing, but is says nothing about whether the degree of representation that a minority community has attained is *sufficient*. It does not speak to the larger issue of whether minority voters are entitled to an even *greater* voice.

Take Nassau County, for example. In the area in and around Freeport, Roosevelt,

Uniondale, and Hempstead, there is a large, geographically compact, politically cohesive minority community – one that I have no doubt would elect a minority State Senator if it were combined into a single State Senate district. However, under the State Senate redistricting plan that was enacted in 2002, this cohesive minority community has been cracked into four separate State Senate districts, such that the minority community in each district is relatively small. The result is that minority voters in Nassau County do not have a meaningful opportunity to participate in the political process and elect the State Senator of their choice.

For these reasons, I supported the plaintiffs in the *Rodriguez versus Pataki* litigation, in which a coalition of voters argued, among other things, that Section 2 of the Voting Rights Act required the State to place the compact and cohesive minority community in Nassau County into a single State Senate district, such that their political potential could be realized. The court disagreed, finding that the plaintiffs had not proven that they would be sufficiently numerous to elect their candidate of choice in their proposed minority district, where the black percentage of the citizen voting age population would have been upwards of 40% by the time of the 2004 election.

I think that was a mistake. As I testified at the trial in that case, I believe that the best way for the political process to attract and embrace minority voters is to ensure that they have meaningful influence in the election of our representatives. Political scientists sometimes refer to this as the "warming effect": when minority voters have a real basis to believe that their voice will be heard, they turn out at the polls in droves. Therefore, even though minority voters constituted something approaching but less than 50% of the population in the district they proposed in *Rodriguez versus Pataki*, the simple fact that they would have had a real chance to elect the candidate of their choice would have energized and galvanized them. It would have

given them a real incentive to fight for their chosen candidate, to form coalitions with other communities, to "pull and haul" for their electoral success – to borrow a phrase from the Supreme Court. What could be more exciting than that?

In my opinion, it is a shame that minority voters in Nassau County were not given this opportunity. But the problem is the court's overly narrow interpretation of Section 2 of the Voting Rights Act. Because the redistricting plan at issue was not "retrogressive" compared to the prior plan, Section 5 would have had nothing to do with it even if Nassau County had been a covered jurisdiction.

Indeed, there are situations in which Section 5 can be used as a sword to hurt minority voters, especially where improper minority "packing" is at issue. In the Bronx, for example, the 34th Senate District is a blatant white gerrymander. Virtually all of the minority voters in the Bronx are packed into four overwhelmingly minority districts. This was done intentionally, so that the drafters of the redistricting plan could siphon together enough white voters to draw a district that would elect a white, Republican representative. The plaintiffs in *Rodriguez versus Pataki* challenged the legality of this blatant white gerrymander, pointing out that if the four overwhelmingly minority districts were unpacked – that is, if the minority voters in the Bronx were more evenly distributed over five districts – all five districts could easily have had black or Hispanic voting majorities.

Ironically, the State defended the white districts by arguing, among other things, that "unpacking" the four overwhelmingly minority districts might have violated Section 5. The State contended, in other words, that causing these 70, 80, and even 90% minority districts to be more like 60% minority would render them less "safe" and therefore vulnerable to the charge of an unlawful retrogression in minority voting strength. Although I do not believe that unpacking

those districts would have rendered them less "safe," the more salient point is that Section 5 should never be used to justify overly packed minority districts. Minority voters will do just fine so long as their numbers give them sufficient hope to keep their community energized and focused.

Regrettably, Section 5 only applies to so-called "covered" jurisdictions, and has no applicability in some areas of the country where minority voting rights are most threatened. Section 5 is no help to the minority voters in Ohio or in most of Florida, which are not covered jurisdictions, where election controversies with significant racial overtones occurred during the last two Presidential election cycles. Section 5 cannot cure the fact that minority communities are disproportionately likely to have ridiculously long lines at their polling places. And section 5 does not afford minority voters the right to cast provisional ballots at their polling places when their names have been improperly purged from the roles.

Should Section 5 be reauthorized? Absolutely. But as we continue to marshal support for extending Section 5, as we of course must do, let us not lose the forest for the trees. We still have a long, long way to go in our struggle to secure every American equal access to the political process without regard to creed or color. Section 5 is but one piece of a larger puzzle. Its reauthorization should include additional, ameliorative voting rights legislation to finally finish the job that we started some 40 years ago.

PREPARED STATEMENT OF WALTER FIELDS, VICE PRESIDENT, POLITICAL DEVELOPMENT, COMMUNITY SERVICE SOCIETY, BEFORE THE NATIONAL COMMISSION ON THE VOTING RIGHTS ACT, JUNE 14, 2005

Community Service Society | Fighting Poverty Strengthening New York

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David R. Jones
President &
Chief Executive Officer

Steven L. Krause
Executive Vice President &
Chief Operating Officer

Testimony of
Walter Fields
Vice President, Political Development
Community Service Society
June 14, 2005

Good afternoon. My name is Walter Fields and I am the Vice President for Political Development of the Community Service Society (CSS), whose President and CEO is David R. Jones. CSS is one of New York City's oldest not-for-profit organizations, with a 160-year history of addressing the needs of low-income residents. CSS has been at the forefront of efforts to improve the human condition in our city, from founding the Columbia University School of Social Work, establishing the prototype for the free school lunch program, building the first model tenement building, aiding victims of the Titanic disaster, and most recently, those affected by the September 11, 2001 terrorist attack on the World Trade Center.

Today, CSS is increasingly making its focus conditions impacting people of color and new immigrant groups in our city. The organization is unique in that it engages in social science research, policy analyses, and provides direct services to combat poverty in the nation's largest city.

I would like to thank the National Commission on the Voting Rights Act for providing us this opportunity to share our thoughts regarding the reauthorization of the Voting Rights Act. I would like to take just a few minutes to outline some of the concerns of CSS as well as provide some thoughts from a New Jersey

perspective, the state where I reside and have been involved in efforts in that state to enlarge democratic participation by Black citizens.

The Community Service Society has used legal advocacy to ensure full and fair representation of the City's poorest neighborhoods, especially Black and Latino voters. In 1989 CSS successfully used the Voting Rights Act to stop the discriminatory purge of over 320,000 voters in United Parents Associations v. New York City Board of Elections. Subject to the State's non-voting purge, CSS proved that the law's application had an unlawful, discriminatory effect as Black and Latino voters were 32% more likely to be purged for non-voting. The federal National Voter Registration Act of 1993 eventually superseded and eliminated New York's non-voting purge.

In 1990 CSS used a state law challenge to enforce the Governor's Executive Order to facilitate agency-based voter registration, particularly in agencies serving poor communities in 100%VOTE v. New York State Board of Elections. In 1995 CSS sued in state court to fully implement voter registration in mayoral agencies in Disabled in Action v. Giuliani with the courts only upholding the right if the Commissioner of the NYC Voter Assistance Commission to obtain annual reports on compliance.

Starting in 1995 CSS litigated a number of cases under the National Voter Registration Act of 1993 ("NVRA") to ensure that voter registration was fully

implemented in agencies that service poor persons, thereby benefiting Black and Latino neighborhoods: National Congress for Puerto Rican Rights v. Sweeney (successfully forcing the NY State Department of Labor to provide voter registration at Unemployment Insurance offices reaching 80,000 applicants per year); League of Women Voters v. Merrill (suit in New Hampshire to force the implementation of the NVRA; Congress instead passed a special law to exempt New Hampshire from compliance, thereby mooting our suit); Disabled in Action v. Hammons (suit seeking full NVRA compliance in every setting where Medicaid applications are processes, resulted in a partial victory that applied only to public hospitals); Cartagena v. Hooks (suit in New Jersey to force access to public records to demonstrate faulty NVRA compliance); Brenda K. v. Hooks (suit in New Jersey to force NVRA compliance for persons with mental disabilities – many of them on fixed incomes). In 1997 in Diaz v. Silver CSS handled an appeal to the U.S. Supreme Court on a constitutional challenge to the 14th Congressional District in New York City currently represented by Congresswoman Nydia Velazquez.

At present CSS is co-litigating a Voting Rights Act and constitutional law challenge to New York's felon disfranchisement law in Hayden v. Pataki. The case affects over a hundred thousands persons currently incarcerated and on parole for felony convictions – the bulk of them Black and Latino and New York City residents. The Hayden case has recently been consolidated on appeal with Muntaqim v. Coombe and will be heard before a full *en banc* court on June 22,

2005 on the limited issue of whether Section 2 of the Voting Rights Act can challenge state felon disfranchisement laws.

CSS has also used legal advocacy to address a number of Election Day matters that hinder the rights of Black and Latino voters to fully exercise the franchise. Along with members of the New York Voting Rights Consortium (a coalition of select legal defense funds that address voting rights issues in minority communities in NYC), CSS was directly engage in Election Protection efforts in the November 2004 general elections helping to document deficient bilingual assistance compliance for Latinos, unfair policies and breakdowns in the processes that handle absentee ballots, and the total failure of the NYC Board of Elections to properly notify voters of their assigned polling place. In years prior to 2004, CSS along with the Consortium, has called for increased monitoring of NYC elections and increased attention to faulty election machine breakdowns in minority neighborhoods.

Finally, CSS was heavily engaged in the advocacy efforts to ensure a fair redistricting plan for the New York City Council in 1992 – including advocacy before the Department of Justice regarding Section 5 preclearance. We were the only independent agency, outside the city's Districting Commission, to advance a full and detailed redistricting plan; based on which many districts were drawn and unprecedented numbers of Black and Latino council candidates were elected.

The Community Service Society fully supports the reauthorization of the Voting Rights Act, in particular provisions such as Section 5 mandating preclearance of changes to election procedures in certain covered jurisdictions and Section 203 mandating consideration of language minorities. While progress has been undoubtedly made in lowering barriers to electoral participation since the passage of the Act in 1965, there still remain impediments to the full participation of Black Americans, Latinos and other language minorities. The administration of the presidential elections of 2000 and 2004 point to continued problems in ensuring these groups have access to the ballot, their votes are indeed counted, and the confidence in the electoral system that is foundational to a democracy indeed exists.

New York City, by any definition one of the nation's most complex cities to administer elections, continues to warrant the oversight of the Voting Rights Act to make certain that racial and ethnic groups that have traditionally been at a political disadvantage are provided access to the ballot. The Act provides a layer of protection for these groups by preventing the manipulation of balloting procedures that have the effect of disfranchising voters. New York State election law is notorious for the effect it has on candidate access to the ballot and the resulting diminishment of the public's choice for elective office. Combined with the opportunity to manipulate balloting due to the lack of transparency in the system, New York City remains fraught with potential obstacles to the full exercise of the vote.

What appears to be minor considerations in the electoral process, such as the age of voting machines, can, in application, be used to disfranchise large pockets of voters – primarily the already underrepresented who most often are racial and ethnic minorities. In addition, the location of polling places can also put voters at a distinct disadvantage to those in primarily white, middle class neighborhoods. The imposition and enforcement of Section 5 over suspect jurisdictions substantially raises the bar and gives voters a greater degree of confidence that the machinery of elections will not be used to dilute their votes.

As the city continues to serve as one of the nation's largest portals for new immigrants, it is imperative that protections in the elections system are maintained for non-English speaking citizens. The large numbers of immigrants that are entering New York City, new to our nation's democratic practices, are most susceptible to having their voting rights diminished by discriminatory practices and devices. It is vitally important for the reauthorization of the Act to include consideration of language differences in the conduct of elections, including the printing of sample ballots, polling site signage, staffing of poll workers, and display of elections information on voting machines. Language should not be a barrier to electoral participation.

In reference to New Jersey, my experience there as the former Political Director for the state NAACP chapter, and as a consultant to both the Democratic and

Republican parties, has caused me great concern over the manipulation of the Act, particularly Section 2, for partisan purposes - mainly in the drawing of state legislative districts. The two major political parties have each found reason to cast their fate with the Voting Rights Act, in a self-serving manner, in the name of "minority" voters. What is lost in the political rhetoric is the true intent of the Act, and its solidarity with the interests of the disfranchised, not partisan political machinery.

In the 2001 legislative redistricting in New Jersey Democrats advanced a plan, under the guise of fulfilling the Voting Rights Act, that not only diluted majority-minority urban districts and but also ceded political power to suburban, white districts. This was done based on the premise that some Black legislators were elected from non-majority minority districts. While this was true, it did not honestly present the truth behind the election of those legislators and their outright control by powerful party bosses. In this case the numbers lied because they did not accurately represent the dearth of Black political power in the state. Too add insult to injury, Black legislators were required to sign identical affidavit attesting to the plan's positive impact on minority representation without ever first seeing the plan. The party's leadership insisted that an expansion of Democratic seats in the legislature would empower Black voters indirectly, by reclaiming the majority Black legislators would then be in line to control key committees. It was a spurious claim then and remains so today.

Four years later the number of Blacks in the state legislature in New Jersey has not increased and their presence has had little impact judging by their inability to claim any of the primary leadership posts in both chambers, and a series of embarrassing mishaps under the administration of the disgraced, former governor that left little doubt as to the
true degree to which Blacks are disfranchised.

I appreciate your invitation to share my thoughts with you. It is vitally important that the Voting Rights Act is reauthorized. Our democracy, still in its infancy, requires extra measures to guarantee the rights vested in our Constitution are indeed extended to all citizens regardless of race, ethnicity or native language. Thank you.

PREPARED STATEMENT OF THE HONORABLE CHARLES D. WALTON, FORMER RHODE ISLAND STATE SENATOR, BEFORE THE NATIONAL COMMISSION ON THE VOTING RIGHTS ACT, JUNE 14, 2005

Statement of The Honorable Charles D. Walton
National Commission on the Voting Rights Act
Northeast Regional Hearing, New York, N.Y.
June 14, 2005

Good Afternoon Mr. Chairman and distinguished members of the National Commission on the Voting Rights Act.

I am Charles D. Walton, former state senator from Rhode Island. I served in the State Senate for eighteen years, and for four years was President Pro Tem. I was first elected in 1983 in a special election following litigation that determined, among other things, that the legislature's initial redistricting plan discriminated against African-American voters because it did not give them an opportunity to elect a candidate of their choice. Prior to my election, no minority had ever served in the Rhode Island Senate. At that time, the NAACP of Rhode Island and the Urban League of Rhode Island played prominent roles in advocacy and testimony about the need for minority representation.

To give you some background on the uniqueness of Rhode Island, the smallest state in the union, it is worth recalling that it played a major role in the importation of African slaves to the new world called "America" beginning in the sixteenth century. In fact, the sole economy of one small town in the state, Bristol, was built around the commerce of slave trading. Today, if you were to visit historic Bristol, you may never know of its role in bringing slaves to the colonies. Also, one of the elite Ivy League colleges, Brown University, (which, incidentally, has the first African-American President of any Ivy League institution) was founded by John Nicholas Brown, a master slave trader. Between 1709 and 1807, Rhode Island merchants sponsored at least 934 slaving voyages to the coast of Africa. Their ships carried an estimated 106,544 Africans from their homeland to the New World.[1] There are still some descendants of the early slaves living in the state.

The first African-American to serve in the State legislature was elected to the House of Representative from Newport in the 1880's. It was not until 1968 that another black was elected to the House. Ten years later, a second black was elected, but a fight was waged to deny him being seated. The House leadership opposed him and used an old criminal charge of shoplifting in Michigan twenty years earlier as a justification for refusing to swear him in. He went to court for an order that he be allowed to serve but died before the matter could be resolved. A second African-American did win the seat in a subsequent special election. Black voters in Providence were angry that their initial choice was not honored and it mobilized them to become more active.

In 1983, when I was elected to the Senate, there were only two African-Americans in the House. There has never been an African-American elected to a statewide office, although three strong candidates have run for statewide office in recent times.

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[1] Jay Coughtry, The Notorious Triangle: Rhode Island and the African Slave Trade, 1700-1807 (Temple University Press, 1981).

The first black to be elected to the Providence City Council was elected in the late 1960's, at a time when there were twenty-six seats on the Council. Since the City Council was reduced to fifteen seats, there have never been more than two African-Americans at any one time. Today, Providence is a majority-minority city. There are four minority representatives on the City Council, two blacks and two Hispanics. One of the black members is the first female and the first African-American to serve as President Pro Tem of the City Council. Whites hold eleven seats on the City Council, and the City has never had a minority mayor.

The first African-American mayor of any city in New England was elected in the City of Newport in the late 1970's and served continuously until the early 1980's. Pawtucket is nearly a majority-minority city, but has never had a black or Hispanic on the City Council and never had a minority elected to the School Committee. The School Committee in Pawtucket is elected at large. The irony of the Pawtucket situation is that at one point in time four of the five members of the School Committee resided on the same street. The State Department of Elementary and Secondary Education brought a lawsuit against the City of Pawtucket because of its patterns of racial discrimination in school assignment, and the matter is still pending in the courts. The City of Woonsocket, in the northern part of the state, is rapidly becoming majority-minority in population. There has never been a person of color on the City Council and in recent history there have been only two minorities to be elected to the School Committee.

As these patterns illustrate racial discrimination exists across New England in the electoral systems for local and state government. Voting patterns are racially polarized, and black voters do not have an equal opportunity to elect representatives of their choice.

This is precisely why we chose to challenge the Rhode Island legislative redistricting plan and subsequently entered federal district court in 2002 to fight the blatant discriminatory actions by the Senate leadership. As a sitting Senator in 2001, I was compelled to build a coalition of local community members and organizations representing a cross-section of Rhode Island's minority and progressive leaders, some of whom had a history of activism and involvement in the political arena. Coalition members included black, white, Latino and Asian representatives. Our main purpose was to establish a presence during the redistricting process, to testify at public hearings, to review redistricting proposals, as well as to offer our own redistricting plan, all with the goal of achieving fair representation for all of the state's minority populations.

Following the 2000 Census, it was clear that the City of Providence would be majority-minority for the first time, giving rise to a redistricting plan that must include this significant growth in population. At the same time, the House and Senate were downsizing, meaning that fewer districts would be drawn, and that each district would include a greater number of voters. In spite of the fact that the Senate was downsizing, districts could be drawn to reflect the newfound status of minority populations, especially in the City of Providence. We demonstrated that out of six senate districts, it was possible to draw three of the six as districts that would give minority voters an

opportunity to elect a candidate of their choice. Our plans were provided to the state Redistricting Commission in a variety of forums, and advocates urged their adoption. This process went on for several months.

After the Redistricting Commission proposed a plan to the legislature, the leadership made significant changes. Every Senator whose district was being affected was called in to speak directly with Senate leaders, to give their comments. However, I was not accorded the same opportunity to provide input on the new proposal. Instead of a private meeting, I was dispatched to an open hearing room immediately before the Redistricting Commission began their proceedings. Despite effectively being excluded from the informal decision-making process, I made my views on the leadership plan known by urging my colleagues not to adopt the plan in the Judiciary Committee hearings and on the floor of the Senate. I explained that, as drawn, the leadership plan diluted the voting strength of African-American voters and Latino voters in the City of Providence. Other witnesses in Committee hearings argued that the proposed plan violated the Voting Rights Act, and they cautioned that litigation was likely to follow if the plan were adopted. The leadership plan was opposed by the NAACP, the Urban League of Rhode Island, the Puerto Rican Political Action Committee, the ACLU, and by numerous other groups. In spite of this strong opposition, in late February and early March the legislature passed this plan with complete disregard of minority interests.

Our opposition to the plan continued and we were able to convince the Governor not to sign the bill into law. He issued a statement indicating that the fact that the plan was not fair to minorities was one important reason why he would not sign the bill. However, this was only a symbolic victory because under state law the plan took effect without his signature.

The Legislature's plan packed black and Hispanic voters in one super district, and then divided the remaining minority populations among several districts in order to protect the white incumbents. Supporters of the Legislature's plan made references to the fact that there were significant numbers of minorities in several of the districts but many minorities are not citizens and therefore it was clear that five of the City's six senate districts would be controlled by white voters. In particular, a politically cohesive community of interest that had existed in my senate district was divided amongst two districts. In short, the plan pitted black and Hispanic candidates against each other in one district, and allowed white incumbents to win in the five other districts. My district became an overwhelmingly Hispanic district, setting up a collision of minority groups fighting against one another for one seat.

The leadership went so far as to take the extraordinary step of undermining the candidate endorsement process by appointing members to the Senate District Committee who supported my opponent, Juan Pichardo. Normally an incumbent candidate controls appointments to this Committee and always receives the endorsement of the Committee. In the face of this highly irregular disregard of an incumbent Senator, I acted quickly to convince the committee members to support me.

Unfortunately, having the committee's endorsement was not enough to overcome the numbers in the election. I waged a strong campaign and sought the support of black and Hispanic voters by walking the district every evening and knocking on voters' doors. However, the district was drawn in such a way as to give control to Hispanic voters. My losing the election became a fait accompli in the fall of 2002, when Juan Pichardo, the Hispanic candidate, won the Democratic primary election in my district.

Prior to the primary election, two lawsuits were filed challenging the redistricting plan. In May, 2002, the NAACP, the Urban League, the Puerto Rican Political Action Committee, the Direct Actions for Rights and Equality organization, and the Black Political Action Committee joined Harold Metts, a former state representative and several other individuals living in the district, to file a suit, *Metts v. Almond,* alleging that the enacted plan violated the voting rights of black voters. We were extremely fortunate to be represented by the **Lawyers' Committee for Civil Rights Under Law** in this effort. They joined forces with a major national law firm, Morrison and Foerster, who financed the out of pocket expenses in the case. The national NAACP also assigned a lawyer to the case. In addition, we had a local attorney, Bruce Pollock, but he could not have taken on the case on his own. Without significant resources, we would not have been able to obtain the expert witnesses and other evidence necessary to pursue the litigation.

A few weeks after *Metts* was filed, several members of the Latino community filed a second lawsuit in federal court alleging that the enacted plan violated the voting rights of Latino voters. This second lawsuit was voluntarily dismissed following Juan Pichardo's success in the primary election.

Originally we strongly believed that both communities had been disadvantaged in the enacted plan. It was possible to have two Hispanic districts and one black district under a fair and equitable plan. Instead, the legislature enacted a plan that provided only one Hispanic district. I was disappointed, to put it mildly, when some leaders in the Hispanic community allowed a settlement of their case with Senate leadership to occur. However, the plaintiffs proceeded in moving forward with the lawsuit on behalf of black voters.

Initially the complaint in *Metts* was dismissed by Federal District Court Judge Ernest Torres on the ground that we could not satisfy the first prong of the *Gingles* test. The case was appealed to the First Circuit Court of Appeals in Boston. The three-judge court overturned Judge Torres' opinion, but then the court decided to hear the case *en banc.* The central issue in the case was whether black voters could make a claim of vote dilution where they could show the ability to elect a candidate of choice in a district that is less than fifty percent black but where it is not possible to draw a majority-black district. Finally, in the spring of 2004, the Court of Appeals sitting *en banc* ruled that we should have the opportunity to present our evidence and sent the case back to district court for a trial.

Once it became clear that we would have a trial, several events came together to put the state in a position to revisit the plan that was approved in 2002. A significant development centered around two senators who resigned, including the President of the

Senate. This resulted in some negotiations with the new senate leadership about changing their current senate districts to include greater minority representation in the City of Providence. Perhaps it was no small factor that across the state line in Massachusetts the Speaker of the House was being indicted for perjury because of testimony he gave in a redistricting case earlier that year. Ultimately we were able to reach agreement to get ten senators to change their district lines so that we could in fact create two districts that give minority voters a chance to elect a candidate of their choice.

In the 2004 elections, under the new plan, Juan Pichardo was re-elected in a majority-minority district and Harold Metts, an African-American, was elected as well, to represent the communities I previously represented. For the first time in the State's history, two people of color now serve in the Rhode Island Senate.

The prevalence of racially polarized voting in Rhode Island elections creates barriers to minorities holding public office and to having effective representation. In addition, there are other factors that disadvantage minority voters in Rhode Island. Even though the state's ex-felon disenfranchisement provisions do allow former felons to vote once they have completed their sentences, including probation and parole, many of them remain disenfranchised. In Rhode Island today 1 out of every 5 black men and 1 out of every 11 Hispanic men in are unable to vote because of felony convictions. Senator Metts is leading an effort now to relax the ban on ex-felon voting so that citizens will have their voting rights restored once they leave prison and people convicted of felonies who do not go to jail will not lose their right to vote.

Based on my eighteen years in public office, my participation in redistricting, and my observations of the political process, **I believe that discrimination in voting and in election processes in the northeastern states is a significant problem.** Subtle methods of drawing districting lines to dilute minority voting strength continue. For example, the requirement that legislative districts follow city boundaries often means that a concentrated minority population that straddles city limits ends up being placed in two districts and thereby is not able to wield significant electoral power. Second, at-large election methods are still used for many local governing bodies. They have the effect of maintaining white voters' control over school districts and city councils even where the minority population is rapidly growing and close to being in the majority.

I can see a great benefit to having more of the country covered by the pre-clearance provisions of Section 5 of the Voting Rights Act. Certainly areas where other violations of the Act are found are prime areas where Section 5 coverage should apply.

Finally, I applaud the work of the **Lawyers' Committee for Civil Rights Under Law** for hosting these hearings and involving an array of community interests in drawing attention to the reauthorization of the Voting Rights Act of 1965. I personally thank you for entering the Rhode Island situation as part of the record to help ameliorate discrimination and to give black and Latino voters greater participation in the political process. I also want to thank the Commission members for their hard work on this crucially important issue.

PREPARED STATEMENT OF THE HONORABLE EMANUEL CLEVER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MISSOURI, BEFORE THE NATIONAL COMMISSION ON THE VOTING RIGHTS ACT, JULY 22, 2005

National Commission on the Voting Rights Act
Midwest Regional Hearing
Minneapolis, MN
Testimony of Congressman Emanuel Cleaver
5th Congressional District of Missouri
July 22, 2005

I would like to begin by commending the National Commission on the Voting Rights Act for their ongoing struggle for civil rights. Composed of some of the most distinguished contemporary civil rights leaders, the Commission provides a sign of hope that voter discrimination will be addressed. It is unfortunate that voter discrimination still exists in this country, but it is imperative that it be addressed head on. I firmly believe no collective body is as qualified to address this issue as the National Commission on the Voting Rights Act. It is an honor to provide my testimony to this Commission.

As we all know, the Voting Rights Act was passed by Congress in 1965 because certain people, mainly African-American citizens, were being silenced at the polls. At first, the Act only monitored a few southern states where blatant evidence regarding the disenfranchisement of African-American voters existed. These states were required to receive federal approval before passing any election laws, and were forbidden from using eligibility tests at the polls.

By 1970, the Voting Rights Act was extended to certain jurisdictions around the entire country, not just jurisdictions within specific southern states. In addition, the Act was amended, enabling private citizens to challenge discriminatory election laws in court. Nationwide voters were no longer required to take literacy tests before registering to vote, and the Act was extended for five more years.

Several adjustments were made to the Act over the following decade. In 1975, bilingual assistance became a requirement at election polls, protecting citizens whose first language is not English. Revisions were also made in 1982, including a clause that the administrative provisions of the Voting Rights Act shall expire in 2007. These provisions include the provisions under Section 5 that require preclearance for new or changing election laws.

The year 2007 is not too far from now, yet it is questionable whether the rights of voters are safe from discrimination. Despite the measures of the Voting Rights Act, thousands of people were again denied their right to vote in the 2000 presidential election. Thirty-five years from the passage of the Voting Rights Act, it was mainly African-American citizens who were turned away.

An estimated 1.9 million votes were discounted in the 2000 election. One million of those were cast by African-American citizens. Voting discrimination in the 2000 election is perhaps best illustrated by the state of Florida, where African-Americans were nearly ten times as likely as whites to have their ballots rejected. In spite of the revisions

made to the original Voting Rights Act, the color of a person's skin is still a deciding factor in whether his or her vote does or does not count in an election.

Growing up in Texas, voting was never discussed because the Cleavers, including my grandfather and great-grandfather, were poor. They could not afford to pay the poll tax which African-Americans were required to pay. While I cannot make up for the lost voting years of my ancestors, I can help assure my children that I am working to lessen the barriers.

The Voting Rights Act is the "mother's milk" for African-American political power. It was a milestone in the fight for civil rights, and I strongly believe in its principles of equality and opportunity for all people to voice their opinion regardless of skin color. It is imperative that we keep these principles alive at the ballot box, and renewal of the Voting Rights Act is critical to preserving these protections for Americans of all races.

Various proposals have been made by Congress that would actually serve to undermine the constitutionality of the Voting Rights Act, creating more voting barriers for many minorities across the country. As Congressman, I will carefully examine all proposals to renew or alter the Voting Rights Act to ensure all Americans are afforded the opportunity to be part of a free and fair election.

PREPARED STATEMENT OF THE HONORABLE JESSE L. JACKSON, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS, SUBMITTED TO THE NATIONAL COMMISSION ON THE VOTING RIGHTS ACT, JULY 22, 2005

07/22/2005 16:07 FAX 002

JESSE L. JACKSON, JR.
2D DISTRICT, ILLINOIS

COMMITTEE ON APPROPRIATIONS

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Congress of the United States
House of Representatives
Washington, DC 20515–1302

Congressman Jesse L. Jackson, Jr.
Statement for the Record
Lawyers' Committee for Civil Rights Under Law
Midwest Regional Hearing on Voting Rights Act of 1965 Reauthorization
Minneapolis, Minnesota
Friday, July 22, 2005

The Voting Rights Act of 1965 is the seminal legislative achievement of the Civil Rights Movement. Though narrowly tailored to address the specific mechanisms of disenfranchisement, the Act's effects have been far reaching. It has been instrumental in creating an environment that encourages the participation of all Americans in the electoral process. The Act has provided previously disenfranchised minority voters an equal opportunity to be elected and represented at all levels of government. Reauthorizing the Voting Rights Act should proceed in that spirit, and I am honored to be a part of the effort.

The Lawyers' Committee for Civil Rights Under Law is to be commended for undertaking regional hearings across the country. The finding of facts is crucial if we are to reauthorize the provisions of the Voting Rights Act that expire in 2007. We also must explore ways in which the Act might be strengthened to adapt to the changing circumstances of the present.

Indeed, many organizations have shown that racially targeted voter suppression efforts are still common. Reauthorization of the Voting Rights Act of 1965 is essential to our nation because of the continuing efforts of some to deny voting rights to segments of our population. No citizen should be discouraged or intimidated from voting because of race or ethnic background, and the United States government should undertake vigorous efforts to make sure discrimination does not happen.

In recent elections, especially the Presidential contests of 2000 and 2004, a troubling array of policies and procedures resulted in the disenfranchisement of thousands of Americans from varying walks of life. In many instances, allegations have been made that these policies and procedures have targeted or disproportionately affected minority communities.

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The National Association for the Advancement of Colored People (NAACP) and People for the American Way (PFAW) report that in 2004, plans to place challengers in many predominantly African-American precincts were prepared in Kentucky. Press reports indicated plans for similar efforts in Ohio and other states. In Texas, students at Prairie View A&M University, a largely African-American institution, were erroneously told that they were ineligible to vote.

Also according to NAACP and PFAW, in 2000, a flawed list of alleged felons was used to purge some 57,700 voters from registration lists. About 54% of those on the purge list were African-American and Latino. On the day of the election, the NAACP reported scores of calls from Floridians reporting intimidation and other problems at voting places.

In light of these reports, we should look for ways to address voting irregularities under the current Voting Rights Act structure, and look for ways in which that structure might be improved to encompass the current manifestations of race-based voter intimidation and suppression.

Reauthorizing and strengthening the Act - both of which occurred in 1970, 1975, and 1982 - will help to address these suppression efforts in two ways. First, it will further empower law enforcement officials to combat voter suppression and intimidation through the legal system. Second, it will reaffirm our government's commitment to protecting voting rights for citizens at all levels, and send a clear signal to anyone who would seek to suppress voting rights that their machinations will not be tolerated.

Specifically, reauthorization of Section 5 of the Act, requiring the Department of Justice to preclear any changes to voting policies and procedures in certain jurisdictions, is vital. Section 5 must not be removed or weakened. However, Section 5 must not be applied nationally where it is not needed. These provisions were specifically designed to target areas where there was a history or pattern of voter exclusion and discrimination. Any modification of Section 5 must be similarly targeted to current problems so that it can pass constitutional muster in a potential court challenge.

For the Midwest region, reauthorizing the Act is important because of the expansion of suppression efforts into our states and cities. In South Dakota, for example, we have seen a number of policies that adversely affect the ability of Native Americans to cast their votes, especially through limits and regulations on the types of identification that voters can use at the polls.

In Detroit, a State Representative was quoted as saying, "If we do not suppress the Detroit vote, we're going to have a tough time in this election." This statement was widely interpreted as a suggestion that African-American voters would be targeted.

In addition, provisions that provide for language assistance at voting places are also key in the reauthorization process. This is true for the entire nation, and especially for the Midwest. As Hispanic and other non-English speaking communities continue to grow and prosper in our region, we will have to redouble our efforts to make sure that all citizens are able to participate in the electoral process. We should examine the language assistance provisions currently in the Voting Rights Act, and modify them to accommodate the changing demographic landscape of the Midwest and the nation.

Once again, I commend the Lawyers' Committee for holding this hearing, and appreciate the participation of all involved in it. I look forward to working with the Lawyers' Committee and all concerned stakeholders as the reauthorization process continues. The Voting Rights Act is the bedrock of modern American democracy. I hope we can maintain that strong foundation, and make it even stronger for the future.

PREPARED STATEMENT OF MEREDITH BELL-PLATTS, STAFF COUNSEL, ACLU VOTING RIGHTS PROJECT, BEFORE THE NATIONAL COMMISSION ON THE VOTING RIGHTS ACT, AUGUST 4, 2005

NATIONAL COMMISSION OF THE VOTING RIGHTS ACT REAUTHORIZATION

Orlando, Florida
August 4, 2005

Determined Resistance in the New South

by Meredith Bell-Platts
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I wish to thank the Commission for allowing me the opportunity to address the continuing need for Section 5 of the Voting Rights Act. I joined the ACLU Voting Rights Project – which has brought over 300 Voting Rights lawsuits since the last reauthorization – in the Fall of 2001 as a staff attorney. A large portion of my earliest responsibilities included monitoring redistricting efforts throughout the country, particularly in South Carolina and Georgia. In the interest of brevity today, I will address matters dealing with voter intimidation and willful attempts to restrict black political power in South Carolina. However, I could just as easily have provided examples from Georgia and other states that I have monitored. I also wish to focus on matters that did not lead to litigation to emphasize that one benefit of Section 5 is the deterrence effect and mediation against changes that would have an immediate and lasting impact on black voting strength. One can easily imagine what the delay and expense additional lawsuits would mean to communities already underserved and with so few resources. These examples demonstrate that much work remains to be done in counties, towns, cities, school boards and other localities throughout the so-named New South.

New South? In almost every community I've visited since moving to Atlanta, the self-proclaimed capitol of the New South, I have been educated on how much progress has been made in race relations. We have all heard of the great changes, the "Quiet Revolution," that has taken place in minority representation due to the Voting Rights Act. I have also observed how much work remains and how discriminatory tactics may be less overt but no less palpable.

South Carolina found itself at the center of the clash of the New South mantras and the Old Confederacy's history during a heated debate and boycott over the display of the Confederate Flag on the State Capitol. The conditions of blacks in South Carolina remain disturbingly worse than the conditions of their white neighbors. In every socio-economic indicator reported by the 2000 census, blacks lagged far behind. The median black family income is slightly greater than one-half that of white families, and 26.4% of blacks live below the poverty level compared to 8.3% of whites. Furthermore, as was reported by our expert, Dr. John C. Ruoff, and found by a three-judge court in the lawsuit of Colleton County v. McConnell (D.S.C. 2002)(redistricting South Carolina's legislative

and congressional districts),[1] South Carolina elections are marked by high levels of racial polarization. Black voters are very cohesive and white voters almost always vote in blocs in opposition to black candidates of choice. Furthermore, black voters are rarely able to elect their candidates of choice in majority white districts.

In the face of such evidence, legislative Democrats, led by then-governor Jim Hodges, argued that black percentages in majority-black senatorial districts could be reduced in order to ward off further electoral failures for the Democratic Party in senatorial elections – a position specifically rejected by the three-judge court. Furthermore, during the trial, it was reported that a collection of citizens in Lexington County, S.C. informed one of their Republican representatives that they didn't want any n-----s on the Lexington County delegation – referring specifically to a plan that had drawn a black representative into portions of Lexington County.

Our expert found that no black candidate of choice of black voters was elected in contested general elections to the General Assembly from a district that was less than 43% nonwhite. Indeed South Carolina Republican Governor Mark Sanford was asked in May about the prospects of blacks winning statewide office in South Carolina; he responded, "I think there never will be." The State, May 10, 2005. This was said with the recognition that South Carolina has one of the highest percentages of black population in the nation at just less than one-third of all residents. It is in such a New Southern climate that I will discuss two compelling cases – one in Sumter County and the other in Greenville.

Sumter County, SC

The City of Sumter, SC's website greets visitors with the following: "Welcome to the City of Sumter. Nestled in the heart of SC, Sumter offers the best traditions of both the Old South and New. It's a community where neighbors still greet each other from shaded front porches, high-tech industries rise alongside the cotton fields and the iced tea is served sweet." I had a very different opinion of Sumter during the latest redistricting efforts for its County Council. Sumter County is 46.7% black. 12.3% of its black residents are unemployed compared to 3.8% of its white citizen. Over a quarter of the black households are below the poverty level. The median income for blacks is $27,687 but for whites it is $47,105.

Sumter has other disturbing traditions, namely a history of Section 5 objections and intentional retrogression. In 1984, the District Court for the District of Columbia denied preclearance to a proposal to adopt an at-large method of electing representatives to the County Council. It found that Sumter County:

> failed to carry their burden of proving that the legislature did not pass Act 371 in 1967 for a racially discriminatory purpose at the insistence of the white majority in Sumter County, because the at-large method of voting may have diluted the value of the then-

[1] The Voting Rights Project's director Laughlin McDonald submitted the decision in Colleton County to this commission with his testimony in Birmingham, AL in March.

> increasing voting strength of the black minority, may have prevented formation of a black majority senate district, and probably prevented appointment by the Governor of blacks to the Sumter County Council.
>
> [and]... failed to carry their burden of proving that the at-large system was not maintained after 1967 for racially discriminatory purposes and with racially discriminatory effect.

County Council of Sumter County v. United States, 596 F.Supp. 35, 38 (D.D.C. 1984).

Sumter County remains a seven-person board, now elected from single member districts. In 1992 DOJ entered another objection to redistricting efforts before a plan that protected the three minority districts was adopted. I monitored the 2000 round of redistricting in Sumter County. Either due to slightly greater increases in black population relative to white population or to the fact that housing remains highly segregated in Sumter County, the benchmark plan with the 2000 Census data showed that Sumter had gained an additional majority black district on County Council, increasing the number of majority black districts from 3 to 4, even though blacks only made up roughly 47% of the population. Furthermore, there were partisan problems since the three black districts were represented by black democrats, and the remaining districts were represented by white republicans. District 7 – the newly emerged majority black district – had a black voting age population of 58.6 and was almost at perfect population. Therefore, there was no reason to adjust District 7 to correct for any unconstitutional population deviations. However, when the Council redrew its lines, it took District 7 from 58.6 percent black population to 49.3 percent and increased the black population in two other districts. At the outset of the redistricting efforts, white council members stated that they were going to create a plan that contained 3 majority white districts, three majority black districts and one "even" district. The Department of Justice denied preclearance, and I have brought the Commission a copy of the letter that the Department sent Sumter County.

Following DOJ's denial, politics on county council became tense. County elections were fast approaching and the current plan was malapportioned. County Councilman Rudy Singleton advocated that the council take their position to the Supreme Court challenging the constitutionality of Section 5's application here, claiming that "the Constitution states the majority will rule." Memorandum of August 8, 2002. This sentiment was reiterated at council meetings I attended in 2003 when the Council decided to consider redistricting yet again. The County offered up compromises claiming that black voters who were a majority in District Seven should be content with a minor variation on the council's original 3-3-1 plan. County Councilman Burr refused to vote for any plan that included four majority black districts. More than a dozen proposals were reviewed by the community and County Council. Robbie Evans, an editor for The Item, the local paper wrote: "The very fact that voting lines must be determined by race is inherently an insult to every Sumter resident who queues up at a polling place each November. What it states, bluntly, is that 200 years after Abraham Lincoln, we, blacks and whites, still are unable to see past the color of a candidate's skin." The Item, Thursday, October 16, 2003. Following the Council refusing to allow certain black citizens to speak during public comment, two black citizens of District 7 showed up at the next council meeting holding signs stating "Don't Reduce the Black Vote." Chaos resulted with certain council

members walking out. A Sumter County resident yelled at council, "I didn't know the NAACP was going to run it [the meeting]." Councilman Burr tried to have the citizens forcibly removed from the chambers. Chairwoman Sanders stated that they could remain.

Sumter County Council finally adopted a plan that preserved District 7 as a majority black district and the Department of Justice granted preclearance. Sumter County now has four black council members. And the representative for District Seven you may ask? The gentleman who fought so hard to speak to council, who carried protest signs into council meetings, is now known as Councilman Eugene Baten, representative for District 7.

Greenville County, SC

Greenville County, SC remained one of a few jurisdictions that did not celebrate the Martin Luther King Jr. holiday. County council had refused for years to vote in favor of it. Newspaper articles debated the cost of an additional holiday to taxpayers. Black voters, the NAACP, and others recognized that one way to sway the council vote would be to exercise their right under state law to vote in the Republican primary to replace a staunch opponent to the MLK holiday – one who incidentally claimed that MLK was not an appropriate role model – with a more moderate Republican who was in favor of the holiday. The battle to replace incumbent Councilman Steve Selby took much longer than many expected. A highly contested race from the start, the campaign resulted in two runoff elections. We became involved with the election when Selby said that he planned to place poll observers during the final runoff on September 7, 2004 and threatened to call for sheriff's deputies to enforce voting laws and encouraged prosecution of anyone trying to vote in the new runoff who already voted in the Democratic primary. Selby's attorney complicated matters when he said, "If Democrats attempt to vote in the election, we're going to call upon the solicitor to start charging and indicting Democrats." The newspaper ran such quotes from Selby and his legal team. To be clear, it was not a crime for democrats to vote in the Republican primary runoffs. The only people who were prohibited from voting in the primary were those voters who voted in the Democratic primary. All other voters, whether democrat or republican, were eligible to vote.

Furthermore, shortly before the runoff election, the Greenville News reported that the League of the South chairman headed a group named "The Committee for Diversity and Fairness" – a group that the Southern Poverty Law Center has classified as a neo-Conservative Hate Group that believes the South is fundamentally Anglo-Celtic, created by and for Christian whites and will allow others to live in the South as long as they know their place." The Committee still supports secession according to the Greenville News. The Committee hosted a fundraiser for Steve Selby and mailed out 3,000 fliers attacking Challenger Tony Trout.

The ACLU of South Carolina, the ACLU Voting Rights Project, and the local branch of the NAACP decided to deploy our own election observers to make certain that eligible voters were not turned away from the polls and were not intimidated by local police. One

can readily imagine what the effect of such high profile coverage might have on deterring eligible voters. We spent many hours working with the Greenville County election officials to make certain that there would be no voter intimidation. We fought off a potential lawsuit that would keep us from being present at polling locations. We challenged that there would be violations of Section 5 if changes to the way the elections were administered were not precleared. I am pleased to report that voter turnout on a Tuesday following Labor Day in the midst of Tropical Storm Frances was at an unprecedented high in majority black precincts. Tony Trout defeated incumbent Steve Selby by slightly less than 300 votes. Selby pointed to heavily black precincts such as Fairview, where he lost 252 to 400; Taylors, where he lost 179 to 274; and Tryon, where he lost in a landslide 7-to-109 vote. Without such turnout, the election would have probably gone to Selby.

Conclusion

While each state is unique, I could say similar things about decisions in predominately black College Park, Ga to locate a polling location within a police precinct or attempts in the City of Albany, GA or Dougherty County, GA to dilute naturally emerging majority black districts by packing black voters into other districts. It bears emphasis that these examples are not from history texts or from Jim Crow days. These events have occurred since the last reauthorization and during my short tenure at the Voting Rights Project. In each of these cases, compliance with Section 5 of the Voting Rights Act has served to protect black voters from devices and plans that would erode their political strength.

PREPARED STATEMENT OF BRYAN L. SELLS, STAFF ATTORNEY, ACLU VOTING RIGHTS PROJECT, BEFORE THE NATIONAL COMMISSION ON THE VOTING RIGHTS ACT, SEPTEMBER 9, 2005

Testimony of Bryan L Sells
National Commission on the Voting Rights Act
Rapid City, South Dakota
September 9, 2005

Thank you. My name is Bryan Sells. I am a staff attorney with the Voting Rights Project of the American Civil Liberties Union.

Over the last six years, the Voting Rights Project has represented tribal members in seven voting rights cases here in South Dakota, and I have been lead counsel in six of those seven cases. Patrick Duffy, of the Rapid City law firm of Duffy and Duffy, has been our local counsel in all seven cases at great personal and professional sacrifice. Our clients' litigation has challenged virtually every level of government in this state, from the state legislature and Secretary of State, including past and present office holders, on down to county commissions, city councils and school boards. To date, our clients have prevailed in five of the seven cases, with one CASE still pending before the district court and one case now pending before the United States Court of Appeals. Together, these cases and the volumes of evidence that they have generated offer a compelling demonstration of the present-day violations of the Voting Rights Act and the need to renew and restore those important provisions of the Act which are set to expire in 2007.

Any discussion of Section 5 compliance in South Dakota has to begin with William Janklow. On August 23, 1977, then state Attorney General Janklow issued an official opinion in which he assailed Section 5 as an "absurdity" that imposed an "unworkable solution to a nonexistent problem." . Janklow advised the South Dakota Secretary of State, Loma Herseth, that he intended to pursue both litigation and legislation that would exempt South Dakota from the Voting Rights Act and that Herseth should therefore disregard the preclearance mandate in the meantime. Janklow never did file a bail-out lawsuit, but Herseth and her successors in office followed Janklow's advice for more than a quarter century.

My office first learned of the State's intentional noncompliance in early 2002 and spent the next six months identifying more than 600 unprecleared voting changes at the state level. When we brought suit in August of 2002 on behalf of four tribal members, the case entitled Elaine Quick Bear Quiver v. Secretary of State Hoyce Hazeltine (now Secretary of State Chris Nelson) was described as the largest voting rights case in history.

The State initially denied the plaintiffs' allegations. Secretary Nelson, who was then the longtime supervisor of the elections department within the Secretary of State's office, was quoted in the media as saying that his office was in full compliance

with the Voting Rights Act – something that obviously turned out not to be true. The parties negotiated a consent order and remedial plan in which the Secretary eventually admitted to more than 800 separate violations of Section 5, and Secretary Nelson has been in the process of bringing the State into compliance with Section 5 for those past violations for the last three years.

Although he has made a lot of progress toward that goal, Secretary Nelson has been cited twice by the court for noncompliance with the terms of the consent order. This year, the *Quiver* plaintiffs had to return to court after the Secretary refused to comply with the consent order with respect to a new law passed at the 2005 legislative session in response to our seventh lawsuit on behalf of Indian voters.

On January 27, 2005, the Voting Rights Project filed suit on behalf of four Native American voters in Charles Mix County alleging: (1) that the county commissioner districts in Charles Mix County are malapportioned in violation of the one-person-one-vote standard of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution; (2) that the commissioner districts have the effect of diluting Native American voting strength in violation of Section 2 of the Voting Rights Act of 1965; and (3) that the commissioner districts were adopted or are being maintained for the purpose of discriminating against Native

American voters in violation of the Fourteenth and Fifteenth Amendments to the United States Constitution and Section 2 of the Voting Rights Act.. That lawsuit is known as Evelyn Blackmoon versus Charles Mix County.

In response to that lawsuit, members of the Charles Mix County Commission asked their state legislators to introduce emergency redistricting legislation that became House Bill 1265. House Bill 1265 enables counties to redraw the boundaries of their county commissioner districts more than once per decade under certain circumstances but only after obtaining permission to do so from the Governor and the Secretary of State. House Bill 1265 was designed to change the existing law which permitted a county to redistrict only once per decade, and only at the county commission's regular February meeting in a year ending in the numeral "2."

House Bill 1265 passed both houses of the state legislature despite vociferous opposition from Native Americans who testified against the bill. The Governor signed the law on March 7, 2005 – the same day on which the *Blackmoon* plaintiffs filed a motion for summary judgment on their one-person-one-vote claim. Because House Bill 1265 contained an emergency clause, it went into effect upon the Governor's signature, and Secretary Nelson began to implement the law immediately.

That is when the *Quiver* plaintiffs returned to court. They obtained a temporary restraining order enjoining the Secretary from implementing House Bill 1265 absent preclearance, and a three-judge district court later turned that TRO into a preliminary injunction. In its unanimous decision issuing the injunction, the three-judge court noted the State's history of intentional noncompliance with the Act, including Secretary of State Nelson's refusal to seek preclearance for the State's 2001 legislative redistricting plan, and described House Bill 1265 as "a rushed attempted to circumvent the VRA." Secretary Nelson has appealed that decision to the Supreme Court, and the *Blackmoon* case remains pending before the district court.

Because my time is short, let me tell you about one more case just briefly.

In March 2003, the Voting Rights Project filed suit on behalf of three members of the Crow Creek Sioux Tribe in a challenge to the county commission districts in Buffalo County, South Dakota known as Crystal Kirkie versus Buffalo County. The plaintiffs alleged that the districts were malapportioned in violation of the one-person-one-vote principle and were adopted or maintained for the purpose of discriminating against Native American voters.

Buffalo County, which according to the 2000 Census is the poorest county in the United States, has a population of approximately 2100 people, approximately 85% of whom are Native American. The county's three commissioner districts, which had been in use for decades, contained populations of approximately 1700, 300 and 100 people, respectively. Virtually all of the 1700 people in commissioner district 1 were Native American, while not a single Indian lived in the underpopulated district 3. The result was that the county's minuscule non-Indian minority had effective control over the county commission.

The parties settled the case in early 2004. The county agreed to redraw its commissioner districts and to hold a special election for two of the three seats. The county also agreed to relief under Section 3(c) of the Voting Rights Act, which effectively means that Buffalo County, is now subject to the preclearance requirements of Section 5 of the Voting Rights Act along with Shannon and Todd counties in South Dakota.

The *Kirkie* case is unique not only because of the severe extent of the malapportionment or the fact that the plaintiffs got relief under Section 3 but also because the case literally caused a revolution in control at the county commision. Most of our seven cases are about giving Native Americans a place at the table.

However, given the local demographics of buffalo county justice required more. The *Kirkie* case was about giving Native Americans the full opportunity to elect representatives of their choice which has resulted in control of the table, and I am pleased to report that Native American voters have elected the representatives of their choice to two out of three seats on the commission, with the third up for election next year.

In closing, let me just list the remaining cases that I won't have an opportunity to discuss so that you can ask me questions about them if you are so inclined.

Emery v. Hunt was a successful challenge in 2000 to the state legislature's decision in 1996 to abolish a single-member house district on the Cheyenne River Reservation that was specifically created in 1991 to avoid minority vote dilution.

Weddell v. Wagner Community School District was a successful challenge in 2002 to at-large school board elections in Charles Mix County, South Dakota, that resulted in the adoption of a cumulative voting scheme by consent of the parties.

Bone Shirt v. Nelson was a successful challenge to the state's 2001 legislative redistricting plan. The plaintiffs prevailed on both their Section 5 claim and their

Section 2 claim, and the district court's 144-page decision on the Section 2 claim is nothing short of historic.

Finally, *Cottier v. City of Martin* is a vote-dilution challenge to the ward boundaries in the reservation border town of Martin, South Dakota. That case is currently on appeal after the district court found that the plaintiffs had not satisfied the third *Gingles* factor.

I want to leave you with this. Perhaps the person whose words best capture the state of Indian-white relations in South Dakota is State Representative John Teupel, whose comments are cited in the *Bone Shirt* decision as part of the plaintiffs' "overwhelming evidence of [the legislature's] unresponsiveness" to Indian concerns. During the 2002 legislative session, Representative Teupel made a lengthy speech in opposition to a bill which would have required state law enforcement officers to collect data on racial profiling. He said that he would be "leading the charge" to end racial profiling, to reduce alcoholism and poverty on the reservations and to support Native American voting rights when Indians decide to be "citizens" of the State by giving up tribal sovereignty and paying their "fair share of the tax burden." Rather than face censure from his colleagues for such openly hostile remarks, Representative Teupel's colleagues elected him to the House Republican leadership in 2003.

That attitude toward Native American voting rights, I am sad to say, is still shared by many in positions of power in this State. Until those attitudes change, Native Americans will continue to need every bit of protection that the Voting Rights Act gives them. Thank you.

PREPARED STATEMENT OF JOAQUIN G. AVILA, ASSISTANT PROFESSOR OF LAW, SEATTLE UNIVERSITY SCHOOL OF LAW, BEFORE THE NATIONAL COMMISSION ON THE VOTING RIGHTS ACT, SEPTEMBER 27, 2005

Testimony of Joaquin G. Avila
Assistant Professor of Law
Seattle University School of Law

The Continued Need for Federal Oversight of California's Electoral Process

Presented Before the
Western Regional Hearing of the
National Commission on the Voting Rights Act
Los Angeles, California
September 27, 2005

California is a land of extremes.[1] There are extremes in weather with sunny warm days disrupted by thunderstorms and tornadoes. There are extremes in geography with mountain ranges and their snow capped peaks and deserts with temperatures in the 100s. There are also extremes in politics. The governor's office is held by a Republican and the Legislature is controlled by the Democrats. And so it is with voting. A legislature is represented by minorities in unprecedented numbers and racially polarized voting continues to prevent minority representation at local governmental levels.

The effects of voting discrimination in California are most visible at the local government level. Although Latinas/os comprise about 32.4% of the state's population, there is a substantial under-representation at all levels of local government.[2] At the county board of supervisor level, the districting of supervisorial districts has either served to fragment politically cohesive Latina/o communities or to over-concentrate them so as to minimize their political influence. In Los Angeles County, it is possible to create two supervisor districts each with close to a 50% Spanish surname registration rate. Yet, a substantial overrepresentation of Latinas/os in one supervisor district exists.[3] In Monterey County, the last supervisorial redistricting served to fragment politically active and cohesive Latina/o communities in the City of Salinas thereby reducing the predominantly Latina/o city's political influence in selecting an additional supervisor. In Tulare County, the redistricting of supervisorial districts has served to diminish the opportunity of the Latina/o communities to elect two supervisors. But, the most significant voting discrimination occurs at the city council, school district, and special election district levels.[4] Although Latinas/os in 2000 comprised about a third of the state's population, in 2004 there were 535 Latinas/os[5] or 11% out of 4,850 elected officials serving on local school boards[6] and there were 357 Latinas/os or 14.2% out of 2,507 elected officials[7] serving on city councils.

This level of underrepresentation is due to the pernicious effects of racially polarized voting in at-large methods of election and the absence of effective enforcement of the bilingual

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[1] Excerpts of this testimony are derived from a report that is being prepared for the Leadership Conference on Civil Rights Educational Fund, as well as, from articles to be submitted to the Seattle University School of Law Law Review and the Stanford Journal of Civil Rights and Liberties.

[2] This is not to say that Latinas/os have reached proportional representation at congressional and state legislative levels. For example, in California, the house congressional delegation consists of 53 members of which at least 7 or about 13 % are Latina/o. Efforts to create another congressional district in Los Angeles where Latinas/os would have another opportunity to elect a candidate of their choice were unsuccessful. *See Cano v. Davis*, 211 F.Supp.2d 1208 (Three Judge Court) (C.D.Cal. 2002).

[3] The reason why this one supervisor district today contains such a substantial Latina/o community is due to the previous success of a challenge to a redistricting plan which continued the historic fragmentation of the predominantly Latina/o community in the East Los Angeles area. *Garza v. County of Los Angeles*, 756 F.Supp. 1298 (C.D.Cal. 1990), *affirmed*, 918 F.2d 763 (9th Cir. 1990), *cert. den.*, 498 U.S. 1028, 111 S.Ct. 681 (1991).

[4] Most of the large cities in California have district elections. The Los Angeles City Council has district elections. At one point, the City Council faced a challenge to its city council districts on the grounds that the redistricting diluted the voting strength of Latinas/os. Ultimately, the case was settled. *U.S., Carrillo v. City of Los Angeles*, Civ. Act. No. CV-85-7739 JMI (JRX) (C.D.Cal. 1985).

[5] National Association of Latin Elected Officials Education Fund, 2004 National Directory of Latino Elected Officials, at 22 (2004).

[6] California School Board Association, Susan Swigart, Director of Member Services – e-mail dated May 17, 2005, to Joaquin G. Avila.

[7] League of California Cities.

election provisions.[8] In California, the at-large method of election is the election method of choice in over 90% of all local governmental entities. There are about 3,000 local governmental entities in California.[9] The use of at-large elections and their potential dilutive effect on minority voting strength has been well documented.[10]

Latinas/os in California have relied upon the federal courts to protect their voting rights and offset the lack of access to the political process caused by racially polarized voting. Initially litigants relied upon a constitutional standard. In 1973, the United States Supreme Court held for the first time in *White v. Regester*, 412 U.S. 755 (1973), that at-large or multimember districts violated the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. The *White* decision invalidated at-large or multimember legislative districts in Bexar County, Texas, on the grounds that these districts diluted the voting strength of Mexican Americans in the San Antonio greater metropolitan area. After the *White* decision, at-large election challenges at the local governmental level were instituted across the Southwest. In California, the first at-large election challenge based upon the Fourteenth Amendment was filed against the City of San Fernando. *Aranda v. Van Sickle*, 600 F.2d 1267 (9th Cir. 1979). The action was unsuccessful and resulted in establishing a difficult evidentiary standards for minority communities seeking to demonstrate that at-large election systems were a violation of the constitution. As a result of the *Aranda* decision, there were no at-large election challenges filed in California during the 1970s.

The constitutional standard was made more difficult when the Supreme Court in *City of Mobile v. Bolden*, 446 U.S. 55 (1980), ruled that litigants had to demonstrate a discriminatory intent in either the enactment of an at-large election system or its maintenance in order to prove

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[8] This testimony will focus on the efforts by minority communities in California to curb the effects of racially polarized voting through litigation pursuant to Section 2, 42 U.S.C. § 1973, and Section 5, 42 U.S.C. § 1973c, of the Voting Rights Act, as well as Section 5 administrative advocacy before the United States Attorney General. A discussion regarding the impact of the bilingual election provisions, 42 U.S.C. § 1973aa-1a(c), and enforcement efforts will not be incorporated into this written testimony.

[9] As of April 2005, there are a total of 478 municipalities: 108 chartered cities, and 370 general law cities. http://www.cacities.org/index.jsp?zone=locc&previewStory=53 Out of the total number of cities, only 27 or 5.6% conduct elections by districts. http://www.cacities.org/resource_files/23513.DISTELEC.doc (the City of Coachella is erroneously listed as conducting district elections). As of July 1, 2004, there were 979 elementary to high school public school districts. Based upon a 1995 survey, 65% of these districts conduct at-large elections, 20% have candidate residency districts and at-large voting, and 15% have district elections. California School Board Association, Susan Swigart, Director of Member Services – e-mail dated May 17, 2005, to Joaquin G. Avila. In a 1987 survey of school districts, it was estimated that over 95% of school districts conducted their elections on an at-large election basis. *See* "Watsonville's new crop," Golden State Report, at 27 (September 1987). Recently, the preliminary results of a survey conducted for a project sponsored by the California Research Policy Center entitled "Systems of Election, Latino Representation, and Student Outcomes in California Schools" shows that in 14 California counties containing significant Latina/o populations (Tulare (50.8%), San Benito (47.9%), Monterey (46.8), Merced (45.3%), Madera (44.3%), Fresno (44.0%), Kings (43.6%), Kern (38.4%), Santa Barbara (34.2%), Ventura (33.4%), Stanislaus (31.7%), San Joaquin (305%), Santa Cruz (26.8%) and San Luis Obispo (16.3%), there are 170 school districts ranging from a 10% Latina/o population concentration to an 86% concentration which did not have a single Latina/o school board member in 2004. At-large elections were conducted in 168 of those school districts. It is also estimated that there are over 1,000 water districts and over 500 special election districts. Although there are no exact numbers, most of these water districts and special election districts conduct their elections on an at-large basis.

[10] *See Thornburg v. Gingles*, 478 U.S. 30, 47, at n. 13 (1986).

that a given at-large election system was unconstitutional. As a result of the *City of Mobile* decision, many at-large election challenges across the country were dismissed. The impact of this decision prompted Congress to amend Section 2 of the federal Voting Rights Act, 42 U.S.C. § 1973, and eliminate the necessity of proving a discriminatory intent pursuant to a statutory standard, as opposed to a constitutional standard.

After Section 2 was amended, Latinas/os filed the first case in California against the City of Watsonville. *Gomez v. City of Watsonville*, 863 F.2d 1407 (9th Cir. 1988), *reversing*, Civ. Act. No. WAI C-85-20319 (N.D.Cal. 1985), *cert. den.*, 489 U.S. 1080 (1989). In *Gomez*, the local Latino community had been unsuccessful in securing the election of their Latino preferred candidates to the city council, because the city's use of an at-large election system in the context of racially polarized voting patterns diluted the voting strength of the Latino community. The case was ultimately successful on appeal to the United States Court of Appeals for the Ninth Circuit. In California, the *Gomez* decision served to renew efforts at the community level to eliminate discriminatory at-large methods of elections.[11]

After the success of the City of Watsonville case, at large election challenges were filed in several areas: City of Salinas, *Armenta v. City of Salinas*, Civ. Act. No. C-88-20567 WAI (N.D.Cal. 1988) (successful); Coalinga-Huron Unified School District, *Valenzuela v. Coalinga-Huron Unified School District*, Civ. Act. No. CV-F-89 428 REC (E.D.Cal. 1988) (successful); City of San Diego, *Perez v. City of San Diego*, Civ. Act. No. 88-0103 RM (S.D.Cal. 1988) (successful); City of Chula Vista, *Skorepa v. City of Chula Vista*, 723 F.Supp. 1384 (S.D.Cal. 1989) (unsuccessful); City of National City, *Valladolid v. City of National City*, 976 F.2d 1293 (9th Cir. 1992) (unsuccessful); Alta Hospital District, *Reyes v. Alta Hospital District*, Civ. Act. No. CV-F-90-620-EDP (E.D.Cal. 1990) (successful); City of Oxnard, *Soria v. City of Oxnard*, Civ. Act. No. 90-5239 R (C.D.Cal. 1990) (voluntarily dismissed, no result); City of Dinuba, *Reyes v. City of Dinuba*, Civ. Act. No. CV-F-91-168-REC (E.D.Cal. 1991) (successful); Cutler-Orosi Unified School District, *Espino v. Cutler-Orosi Unified School District*, Civ. Act. No. CV-F-91-169-REC (E.D.Cal. 1991) (successful); Dinuba Elementary School District, *Reyes v. Dinuba Elementary School District*, Act. No. CV-F-91-170-REC (E.D.Cal. 1991) (successful); Dinuba Joint Union High School District, *Elizondo v. Dinuba Joint Union High School District*, Civ. Act. No. CV-F-91-171-REC (E.D.Cal. 1991) (successful); Salinas Valley Memorial Hospital District, *Mendoza v. Salinas Valley Memorial Hospital District*, Civ. Act. No. C-92-20462 RMW (PVT) (N.D.Cal. 1992) (voluntarily dismissed, no result); Monterey County Superior Court, *Trujillo v. State of California*, Civ. Act. No. C-92-20465 RMW (EAI) (N.D.Cal. 1992) (voluntarily dismissed, no result).

However, this period of Section 2 enforcement in California was short-lived. Two major unsuccessful at-large election challenges served to discourage any further litigation by private parties. These two cases involved challenges to the at-large method of election in the El Centro School District and the City of Santa Maria. *Aldasoro v. El Centro School District*, 922 F.Supp339 (S.D.Cal. 1995) & *Ruiz v. City of Santa Maria*, Civ. Act. No. 92-4879 JMI(SHX)

[11] While the City of Watsonville case was pending on appeal, a challenge was filed to the conversion from district based elections to a modified at-large election system for the City of Stockton. The case was ultimately unsuccessful. *Badillo v. City of Stockton*, Civ. Act. No. CV-87-1726-EJG (E.D.Cal. 1987), *affirmed*, 956 F.2d 884 (9th Cir. 1992).

(C.D.Cal. 1992), *reversed*, 160 F.3rd 543 (9th Cir. 1988), *cert. denied*, 527 U.S. 1022 (1999), *trial on the merits*, Findings of Fact and Conclusions of Law – Granting Judgment to City (filed August 16, 2002). These cases consumed substantial resources and in the case of the Santa Maria litigation a final decision was not rendered until ten years after the case had been filed.[12] Perhaps the most chilling aspect of these losses were the efforts by the defendants to collect on their Bill of Costs filed pursuant to 28 U.S.C. § 1920. In the El Centro School District litigation, the ultimate Bill of Costs was pared down to $ 19,462.01. The District Court denied the plaintiffs request to retax the costs and did provide for a ten day stay to permit the plaintiffs to seek a stay before the U.S. Court of Appeals for the Ninth Circuit. *Aldasoro v. Kennerson*, 915 F.Supp. 188 (S.D.Cal. 1995). The school district successfully applied pressure on the plaintiffs to dismiss their appeal in exchange for the school district to withdraw their Bill of Costs. A similar litigation strategy was pursued in the Santa Maria litigation.

As a result of the El Centro and Santa Maria litigation experiences, no private litigants have filed any more at-large election challenges since **1992** under the federal Voting Rights Act.[13] The absence of private litigants is significant since as the following table[14] demonstrates, the private bar has been largely responsible for enforcement of minority voting rights.[15]

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[12] Since 1990, the United States Department of Justice has filed two cases challenging at-large methods of election. *U.S. v. San Gabriel Valley Mun. Water District*, Civ. Act. No. 007903 AHM BRX, 2000 WL 33254228 (denial of preliminary injunction, filed Sept. 8, 2000) (C.D.Cal.) & *U.S. v. City of Santa Paula*, (cited in Voting Section website, http://www.usdoj.gov/crt/voting/sec_2/recent.htm).

[13] There have been a small number of jurisdictions which have voluntarily converted from an at-large method of election to a district-based election system. *See e.g.*, Hartnell Community College District in Monterey County, the San Jose/Evergreen Community College District, and the Salinas Union High School District in Monterey County. This number is miniscule when compared to the overwhelming number of jurisdictions which still retain an at-large method of election.

[14] Source: Annual Report of the Director of the Administrative Office of the United States Courts, Reports of the Proceedings of the Judicial Conference of the United States, Years 1977 - 1996, Tables C 2.
Judicial Business of the United States, 1997 - 2004 Annual Reports of the Director, Administrative Office of the U.S. Courts. http://www.uscourts.gov/judbus2004/appendices/c2.pdf
(September 30, 2004, Table C-2, at p. 133);
http://www.uscourts.gov/judbus2003/appendices/c2.pdf
(September 30, 2004, Table C-2, at p. 127);
http://www.uscourts.gov/judbus2002/appendices/c02sep02.pdf
(March 31, 2002, Table C-2, at p. 45) (includes within private cases category, two cases listed under "Diversity of Citizenship" sub-category);
http://www.uscourts.gov/judbus2001/appendices/c02sep01.pdf
(March 31, 2001, Table C-2, at p. 45);
http://www.uscourts.gov/judbus2000/appendices/c02sep00.pdf
(September 30, 2000, Table C-2, at p. 136);
http://www.uscourts.gov/judbus1999/c02sep99.pdf
(September 30, 1999, Table C-2, at p. 137);
http://www.uscourts.gov/dirrpt98/c02sep98.pdf
(September 30, 1998, Table C-2, at p. 143);
http://www.uscourts.gov/judicial_business/c02sep97.pdf
(September 30, 1997, Table C-2, at p. 129).

[15] *See also* B. Grofman and C. Davidson, eds., Controversies in Minority Voting, The Brookings Institute (1992), at 241 (Gregory A. Caldeira, "Litigation, Lobbying, and the Voting Rights Bar") ("Members of the voting rights bar outside the federal government institute perhaps 95 percent of these [voting rights] cases in any particular year. Enforcement of voting rights is, therefore, very much an activity of the private sector.").

Voting Cases Commenced in United States District Courts - Table 1				
Year	U.S. Cases - Plaintiff	U.S. Cases - Defendant	Private Cases	Totals
1977	15	9	179	203
1978	11	5	123	139
1979	13	7	125	145
1980	6	7	147	160
1981	8	9	135	152
1982	4	11	155	170
1983	1	6	168	175
1984	10	9	240	259
1985	17	5	259	281
1986	12	4	178	194
1987	12	7	195	214
1988	11	9	327	347
1989	11	5	167	183
1990	10	6	114	130
1991	10	7	180	197
1992	9	12	473	494
1993	14	11	188	213
1994	13	13	207	233
1995	9	11	215	235
1996	8	9	168	185
1997	2	10	129	141
1998	2	7	99	108
1999	6	3	93	102
2000	16	10	141	167
2001	10	16	163	189
2002	6	15	181	202

Voting Cases Commenced in United States District Courts - Table 1				
2003	3	5	139	147
2004	12	9	152	173
Totals	261	237	5,040	5,538

Due to the difficulties associated with filing at-large election challenges under the federal Voting Rights Act, an effort was pursued to create a state voting rights act in California. The State Act was designed to permit the filing of legal actions in state court against at-large methods of election without having to demonstrate the costly and difficult evidentiary standards required under the federal Act. This effort was successful. In 2002, the California State Voting Rights Act became law. Calif. Elections Code §§ 14025 – 14032.

Two cases have been filed by the Lawyers' Committee for Civil Rights for the San Francisco Bay Area pursuant to the state act challenging the at-large method of election. The first was filed against the Hanford Joint Union High School District. *Gomez v. Hanford Joint Union High School District*, Civ. Act. No. 04-Co284 (Kings County Superior Court, Cal. 2004). This case was successfully settled. The school district agreed to dismantle the at-large method of election and a districting plan was ultimately adopted.[16] The second case was an at-large election challenge against the City of Modesto. *Sanchez v. City of Modesto*, Case No. 347903 (Stanislaus County Superior Court, Cal. 2004). Recently, the Superior Court held that the California State Voting Rights Act was unconstitutional and granted the city's motion for judgment on the pleadings. An appeal is under way.[17]

In summary, at the moment, Section 2 has been ineffective in eliminating discriminatory at-large methods of elections in California.[18] As previously mentioned, Section 2 cases consume a significant amount of financial resources. In addition, the evidentiary burdens established by federal courts to prove a Section 2 are often insurmountable. Given these experiences with Section 2 litigation, unless there are significant amendments to Section 2, this particular provision will not provide the means for eliminating discriminatory at-large election methods in California. If the California State Voting Rights Act is held to be constitutional by the California State Supreme Court, then the state courts will provide a more meaningful access for Latinas/os and other minorities to the political process.

The other significant provision of the Voting Rights Act is Section 5. The Section 5 preclearance provisions have had a significant impact on Latina/o political empowerment in

[16] The firm of Farella, Braun & Martel assisted in this litigation.
[17] The firm of Heller, Ehrman, White & McAuliffe assisted in this litigation.
[18] A recent notable exception to Section 2 litigation experiences in California occurred in Montana where the Court of Appeals for the Ninth Circuit in *U.S. v. Blaine County*, 363 F.3d 897 (9th Cir. 2004) upheld a District Court's finding that an at-large method of electing county commissioners violated Section 2. The success of this case only serves to reinforce the tremendous financial costs associated with these cases. Finally, the difficulty of meeting the evidentiary standards of Section 2 is highlighted in an unsuccessful challenge to a voting qualification which permitted only property owners to vote in elections for selecting members of the governing board of an agricultural improvement district, *Smith v. Salt River Project Agricultural Improvement and Power District*, 109 F.3d 586 (9th Cir. 1997).

California. As a result of the application of a triggering formula incorporated in Section 4(b) of the Act, 42 U.S.C. § 1973 b(b), a jurisdiction, such as a state, county, city, school district, or special election district, must submit all changes affecting the right to vote enacted after a certain date to the United States Attorney General or the United States District Court for the District of Columbia for approval.[19] Absent such approval the voting change cannot be implemented in any election. Attempts to implement a voting change without the requisite Section 5 approval will result in an injunction preventing the jurisdiction from conducting an election incorporating the voting change. *Lopez v. Monterey County (I)*, 519 U.S. 9 (1996). The most significant feature of Section 5 is the reversal of the burden of proof. A jurisdiction submitting a voting change for approval must demonstrate that the voting change was not adopted pursuant to a discriminatory purpose and does not have a discriminatory effect on minority voting strength.

Jurisdictions subject to Section 5 review have two avenues for seeking approval of voting changes: judicial and administrative preclearance. Since the administrative procedure is less expensive and less time-consuming, most jurisdictions submit their voting changes to the United States Attorney General for Section 5 approval. If the Attorney General concludes that the submitting jurisdiction has not met its burden of demonstrating the absence of a discriminatory purpose and effect, a letter of objection is issued. The letter of objection is the equivalent of a federal court order. Upon receipt of such a letter, the jurisdiction is precluded from implementing the voting change in any elections.

Since 1982, there have been four letters of objection issued by the United States Attorney General. The letters involved objections to devices which have traditionally served to discriminate against minority voting strength. Two of the letters involved redistrictings of county supervisorial districts in Merced County[20] and in Monterey County.[21] In both of these instances the ultimate result was the election of a Latina/o candidate for the board of supervisors. In Monterey County, the last time a Latina/o had been elected was over a hundred years ago.

The experience with Section 5 enforcement in California demonstrates the stark contrast between the protections offered by the two provisions. It has been suggested that perhaps by strengthening the protections provided by Section 2, there is no need for Section 5 preclearance. However, the experiences in California demonstrate that Section 2 cannot serve as a substitute for Section 5 preclearance. Under Section 5, the advantages of "time and inertia" are shifted "from the perpetrators of the evil [of voting discrimination] to its victims."[22] An administrative process of 60 days, where the burden of proof is upon the submitting jurisdiction, is substituted for a judicial process, where the burden of proof is upon the minority plaintiffs. Such a difference will often dictate whether an election feature or change will survive a legal challenge. Two examples will illustrate this point.

As the result of the 1975 amendments to the Voting Rights Act, the City of Hanford became subject to the Section 5 preclearance requirements. Subsequently, after an extended

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[19] In California, there are only four counties subject to the Section 5 preclearance requirements: Monterey County, King County, Merced County, and Yuba County.
[20] U.S. Department of Justice, Letter of Objection, April 3, 1992.
[21] U.S. Department of Justice, Letter of Objection, February 26, 1993. *See also Gonzalez v. Monterey County*, 808 F.Supp. 727 (N.D.Cal. 1992).
[22] *State of South Carolina v. Katzenbach*, 383 U.S. 301, 328 (1966).

setting of the special election[29] and the actual date of the election, presenting a Section 2 case with all of the required expert-intensive evidence relating to a history of voting discrimination, racially polarized voting, and racial appeals, among other factors, would not have been possible.[30] With respect to the Monterey County polling place consolidations, there was no realistic opportunity to even utilize Section 2.

Any doubt as to whether covered jurisdictions would revert to discriminatory methods of election once Section 5 preclearance was no longer required, was laid to rest with the attempted conversion from a district election system[31] to an at-large method of election for the Chualar Union Elementary School District in Monterey County. The Department of Justice issued a Letter of Objection which prevented this conversion from occurring.[32] The school district at one time had elected its board members pursuant to an at-large method of election. In 1995, when the Latina/o board membership consisted of a majority of the board, the method of election was changed to a district based election system. However, a dispute arose between the Latina/o board members and members of the white community. This dispute led to the effort to return to an at-large election system. The Department of Justice found that the cover letter accompanying the petition to change the method of election contained language that was expressed in a tone that ". . . raises the implication that the petition drive and resulting change was motivated, at least in part, by a discriminatory animus." Moreover the letter stated that under the previous at-large method of election, the Latina/o board members were susceptible to recall petitions, whereas under the district based election system, Latina/o board members have not been subject to recall. In Chualar, the absence of the protective features of Section 5 would have resulted in a reversion to the former discriminatory at-large method of election.

One could simply conclude that four Letters of Objection since 1982 in the four counties covered under Section 5 in California indicates that Section 5 is not needed. However, such a conclusion would be unwarranted for two reasons. First, the Letters of Objection served to discourage governmental entities from adopting plans which discriminated against Latina/o voting strength. The receipt of the Letter of Objection in Monterey County regarding the 1992 redistricting plan served as an effective check on other governmental bodies who may have thought to implement discriminatory election practices or procedures. It did not discourage all instances of voting discrimination, as evidenced in the Letter of Objection issued against the Chualar Union Elementary School District in 2002. However, it did provide an effective tool to local community activists to present any objections to proposed voting changes which had the potential for a discriminatory effect on minority voting strength.[33]

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[29] The Secretary of State on July 24, 2003, set the gubernatorial recall election for October 7, 2003. *Oliverez v. State of California*, Civil Action No. 03-03658 JF, Complaint for Declaratory and Injunctive Relief, ¶ 2 (Filed August 6, 2003).

[30] *See generally, Thornburg, supra*, note 10.

[31] The district election scheme consisted of at least one district containing three school board members. This multimember district was predominantly Latina/o.

[32] U.S. Department of Justice, Letter of Objection, March 29, 2002.

[33] Even when the effort to secure a Letter of Objection was unsuccessful, community based litigation efforts produced positive results. After protracted litigation lasting about nine years in Monterey County, the State of California and Monterey County were required to submit a series of judicial district consolidation ordinances for Section 5 approval. *Lopez I & Lopez v. Monterey County (II)*, 525 U.S. 266 (1999). During the course of the litigation, the District Court ordered a special election based upon an election district plan. *Lopez v. Monterey County*, 871 F. Supp. 1254 (N.D.Cal. 1994). As a result of this election and gubernatorial appointments, minorities

Second, the conclusion assumes that there has been compliance with the Section 5 preclearance provisions. Such an assumption is unwarranted. There is a significant problem relating to the enforcement of the Section 5 preclearance provisions. To achieve the purpose of eliminating voting discrimination, the Voting Rights Act relies upon Section 5 covered jurisdictions to voluntary comply with the submission requirements. Based upon a long series of cases culminating in *Lopez I*, Section 5 covered jurisdictions are under a legal mandate to submit their voting changes prior to implementation in any elections. In reality, many Section 5 covered jurisdictions are delinquent in the timely submission of their voting changes. Some jurisdictions, but for litigation, would not have submitted any voting changes. This sordid record of non-compliance is documented in Letters of Objection. For example, in the *Lopez* litigation, the Supreme Court referred to voting changes, adopted by California and implemented by Monterey County in the late 1960s, which as of 1999 had still not received the necessary Section 5 preclearance. *Lopez (II)*. This record of non-compliance has been cited numerous times by the United States Commission on Civil Rights,[34] by congressmen and witnesses in testimony when the Act was reauthorized in 1970,[35] 1975,[36] and 1982,[37] by the Government Accounting Office,[38]

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for the first time in Monterey County served on the County's Municipal Court District. When the ordinances were submitted for Section 5 review, the Department of Justice approved the voting changes over the objections of the local minority community. The effect of the Section 5 approval was to permit the County to conduct county-wide or at-large elections for judicial offices. In subsequent elections, the minority judges have been able to withstand challenges and are still on the bench.

[34] United States Commission on Civil Rights, Political Participation, A study of the participation by Negroes in the electoral and political processes in 10 Southern States since passage of the Voting Rights Act of 1965, at 184 (1968) (Commission recommended that the Attorney General "... should promptly and fully enforce Section 5 ...."); U.S. Comm'n on Civil Rights, The Voting Rights Act: Ten Years After, at 28 ("Non-compliance with the Voting Rights Act through failure to submit changes remains a problem in enforcement of the act.") (January 1975); U.S. Comm'n on Civil Rights, The Voting Rights Act: Unfullfilled Goals (September, 1981), at 70–75 (chronicling extent of failure to submit voting changes for Section 5 preclearance).

[35] *Voting Rights Act Extension: Hearings on H.R. 4249, H.R. 5538, and Similar Proposals, to Extend the Voting Rights Act of 1965 with Respect to the Discriminatory Use of Tests and Devices Before Subcomm. No. 5 of the House Comm. on the Judiciary*, 91st Cong. 4 (statement of William McCulloch, Member, House Comm. on the Judiciary) ("Section 5 was intended to prevent the use of most of these devices. But apparently the States rarely obeyed the mandate of that section, and the Federal Government was too timid in its enforcement."), 18 (statement of Howard A. Glickstein, General Counsel and Acting Staff Director, U.S. Comm'n on Civil Rights: "Despite the requirements of section 5, the State of Mississippi made no submission to the Attorney General, and the new laws were enforced.") (1969). *See also Amendments to the Voting Rights Act of 1965: Hearings on S. 818, S. 2456, S. 2507, and Title IV of S. 2029, Bills to Amend the Voting Rights Act of 1965 Before the Subcommittee on Constitutional Rights of the Senate Committee on the Judiciary*, 91st Cong. 51–53 (statement of Frankie Freeman, Member, U.S. Comm'n on Civil Rights – Commissioner Freeman acknowledged that most states complied with Section 5, but did recognize that there were instances of non-compliance which could be addressed through litigation by the United States Attorney General) (1969).

[36] *Extension of the Voting Rights Act, Hearings on H.R. 939, H.R. 2148, H.R. 3247, and H.R. 3501, Extension of the Voting Rights Act, Before the Subcommittee on Civil and Constitutional Rights of the Committee on Civil and Constitutional Rights of the Committee on the Judiciary, House of Representatives*, 94th Cong. 281 (statement of J. Stanley Pottinger, Assistant Attorney General, Civil Rights Division) ("In summary, the protections of section 5, should be expanded because: first, it has been effective in preventing discrimination; second, it has never been completely complied with by the covered jurisdiction; and third, the guarantees it provides are more significant to the country than the slight interference to the Federal system which this powerful provision would incur.") (1975).

[37] *Extension of the Voting Rights Act: Hearings on Extension of the Voting Rights Act Before the Subcomm. on Civil and Constitutional Rights of the House Comm. on the Judiciary*, 97th Cong. 2117 (statement of Drew S. Days III, Assistant Attorney General, Civil Rights Division) (". . . I will not sit before you today and assert that even during

and by Supreme Court precedent.[39] Also as a result of independent reviews of voting changes in selected jurisdictions, the record demonstrates that non-compliance is a significant problem. For example, in Merced County, California, there are special election districts that have not submitted their annexations for Section 5 approval.

In summary, there continues to be a need for Section 5 preclearance. At a minimum, efforts should be undertaken to insure that jurisdictions have fully complied with Section 5. Most importantly, these special provisions should be extended for another 25 years. In California Section 5 has been very effective in preventing the implementation of discriminatory voting changes and has discouraged jurisdictions from reverting back to previous election methods that served to deny Latinas/os with access to the political process. Since the founding of this nation to the culmination of the Second Reconstruction and the passage of the 1965 Voting Rights Act, minorities were effectively excluded from the political process and body politic. For close to two centuries, there was a struggle to expand the franchise and provide that most fundamental of all rights. The problems associated with voting discrimination continue to this day, especially as evidenced in both the 2000 and 2004 presidential elections.[40] Unfortunately the well documented history of voting discrimination in this country has clearly demonstrated that there is still much work to be done. Without the protection provided by the special provisions of the Voting Rights Act, we will simply retrogress in our efforts to expand the right to vote. As a society we cannot continue to have in our midst political outcasts who have no vested interest in the well-being of our communities. Only by instilling a sense of ownership through participation in the political process, can we begin to meaningfully politically integrate these communities who heretofore have not had the opportunity to participate and become a member of our body politic. Access to the ballot provides a powerful tool for the development of politically vested stakeholders who will not only protect their community, but will also serve as role models for our next generation of political leaders. This is why the Voting Rights Act is needed.

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what I think was a period of vigorous enforcement of the Act that the Department was able to ensure that every, or indeed most, electoral changes by covered jurisdictions were subjected to the Section 5 process. There was neither time nor adequate resources to canvas systematically changes since 1965 that had not been precleared, to obtain compliance with such procedures or even, in a few cases, to ascertain whether submitting jurisdictions had complied with objections to proposed changes. It was not uncommon for us to find out about changes made several years earlier from a submission made by a covered jurisdiction seeking preclearance of a more recent enactment.") (1982).

[38] *GAO Report on the Voting Rights Act: Hearings on GAO Report on the Voting Rights Act Before the House Subcommittee on Civil and Constitutional Rights, of the Committee on the Judiciary*, 95th Cong. 84 (Report noted that the Department of Justice did not systematically identify and secure the submission of voting changes enacted by covered jurisdictions and that Department's efforts were at best "sporadic" and fell "far short of formal systematic procedures to make sure that changes affecting voting are submitted.") (1978).

[39] *See, e.g., Perkins v. Matthews*, 400 U.S. 379, 393, n. 11 (1971) (in reviewing a table of submissions prepared by the Attorney General which demonstrated "... that only South Carolina has complied rigorously with § 5 . . .," the Court stated: "The only conclusion to be drawn from this unfortunate record is that only one State is regularly complying with § 5's requirement.").

[40] For the 2000 presidential elections *see generally* U.S. Comm'n on Civ. Rts., Voting Irregularities in Florida During the 2000 Presidential Election (June 2001). For the 2004 presidential elections *see generally* U.S. House of Representatives, Status Report of the House Judiciary Committee Democratic Staff, Preserving Democracy: What Went Wrong in Ohio (January 5, 2005). *See also* Carter-Baker Commission on Federal Election Reform, Building Confidence in U.S. Elections (September 2005) (Commission presented 87 recommendations for election reform).

Office of the Assistant Attorney General *Washington, D.C. 20530* 4002

Mr. Kenneth L. Randol
Merced County Clerk
2222 M Street
Merced, California 95340

APR 3 1992

Dear Mr. Randol:

This refers to the redistricting plan for the board of supervisors in Merced County, California, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your responses to our request for additional information on February 3 and 18, 1992.

We have considered carefully the information you have provided, as well as information from other interested parties. The 1990 Census reports that Hispanics constitute approximately one-third of the county's population, and that the Hispanic share of the county's population grew substantially during the 1980s. Under the existing districting plan, the Hispanic share of the population is greatest in District 2, where Hispanics currently comprise about 42 percent of the population. During the redistricting process the county demographer's alternative plans showed that Hispanic voting strength in that district could be increased to more than a majority of its population by eliminating the fragmentation of the Hispanic community around the City of Merced and by including the City of Livingston in District 2. Members of the Hispanic community, as well as persons from the black community, urged the adoption of a plan that recognized the increased minority population in the county.

The county, however, rejected the approach to redistricting developed by its demographer and has submitted a plan in which Hispanics are not a majority of the population in any district. We have reviewed the county's stated reasons for its decision and are concerned that a desire to protect the incumbent supervisors may have prevailed over the interest of providing minorities an opportunity to elect their preferred candidate. Incumbency protection may in the appropriate circumstances be a proper redistricting goal but we cannot preclear a plan where such protection is obtained at the expense of recognizing the community of interest shared by insular minorities. See, e.g., Garza v. Los Angeles County, 918 F.2d 763, 771 (9th Cir. 1990), cert. denied, 111 S. Ct. 681 (1991); Ketchum v. Byrne, 740 F.2d 1398, 1408-09 (7th Cir. 1984), cert. denied, 471 U.S. 1135 (1985).

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. See Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.52). In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that the county's burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the submitted redistricting plan.

We note that under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the redistricting plan has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. In addition, you may request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the redistricting plan continues to be legally unenforceable. Clark v. Roemer, 111 S. Ct. 2096 (1991); 28 C.F.R. 51.10 and 51.45.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action Merced County plans to take concerning this matter. If you have any questions, you should call Mark A. Posner (202-307-1388), an attorney in the Voting Section.

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division

Office of the Assistant Attorney General Washington, D.C. 20035

February 26, 1993

4003

Leroy W. Blankenship, Esq.
Senior Deputy County Counsel
Monterey County
P. O. Box 1587
Salinas, California 93902-1587

Dear Mr. Blankenship:

This refers to the redistricting plan for the board of supervisors, the appointment of a redistricting commission and a revised election schedule for the June 8, 1993, special election in Monterey County, California, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your initial submission on December 28, 1992; supplemental information was received on January 22 and on February 10, 11 and 23, 1993.

We have expedited our review of this submission in light of the February 26, 1993 preclearance deadline identified by the United States District Court in Gonzalez v. Monterey County, No. C-91-20736, slip op. (N.D. Cal. Dec. 8, 1992). However, your initial submission, which provided little information about the redistricting process, stated that supplemental information including trial transcripts, documents provided to the redistricting commission, redistricting commission transcripts, documents provided to the board of supervisors, and minutes and agendas of the board of supervisor meetings at which the proposed plan was discussed, would be provided as soon as possible. We did not receive any of this supplemental information until January 22, 1993. In addition, your initial submission stated that the supplemental information would include trial briefs, final election results for the June and November, 1992 elections and registered voter information by race and ethnicity; we have not received this material. Nevertheless, we believe we have a sufficient basis to make a determination on the merits of the submitted voting changes.

The Attorney General does not interpose any objection to the proposed election calendar, for which we received the supplemental information to complete your submission on February 23, 1993. As authorized by Section 5, we reserve the right to reexamine this submission if additional information that would otherwise require an objection comes to our attention during the remainder of the sixty-day review period. The Attorney General does not interpose any objection to the appointment of the redistricting commission, to the extent that it is a change affecting voting. However, we note that the failure of the Attorney General to object does not bar subsequent litigation to enjoin enforcement of these changes. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41 and 51.43).

With regard to the proposed redistricting plan, we have carefully considered the information you have provided, as well as information provided by other interested persons. According to the 1990 Census, the total population of Monterey County is 355,660, among whom 33.6 percent are Hispanic, 7.1 percent are Asian-Pacific Islander and 6.1 percent are black; Hispanics comprise 17.3 percent of the voting age citizens in the county. No Hispanic has been elected supervisor in Monterey County in this century.

The proposed redistricting plan provides for two districts, District 1 and District 3, in which Hispanics comprise a majority of the total population, but in which white non-Hispanics comprise a plurality of the citizen voting age population. The proposed redistricting plan has a total population deviation in excess of 15 percent. Our analysis has considered the manner in which the county's minority population is distributed among supervisorial districts under the proposed plan, as well as under the county's 1981 redistricting plan, which has been enjoined by the court in Gonzalez v. Monterey County, supra, (N.D. Cal. Sept. 8, 1992), the April, 1992 redistricting plan that was precleared under Section 5 but did not become effective under state law and has been repealed, and the September, 1992 redistricting plan that was agreed to by the plaintiffs and the minority plaintiff-intervenors in the Gonzalez case but was rejected by the county.

Our examination of the county's demographics reveals a discrete concentration of Hispanic population in and near the City of Salinas that provides the basis for a supervisorial district in which Hispanics comprise at least a plurality of the citizen voting age population. The boundaries of the proposed redistricting plan, however, divide a heavily-Hispanic area in the southern portion of the City of Salinas from the remainder of proposed District 1, while a heavily-white non-Hispanic area of

roughly equivalent population in the northern portion of the city is included in proposed District 1. In addition, heavily Hispanic areas in the northwestern portion of the county are included in proposed District 2, rather than in proposed District 3. As a consequence, neither proposed District 1, nor any other district in the proposed plan, contains even an Hispanic plurality of the citizen voting age population.

We note that the court in Gonzalez, supra, slip op. at 20 (N.D. Cal. Dec. 8, 1992), has advised:

> In balancing the advancement of minority voting strength against the preservation of legitimate community interests, the parties are reminded that while the maintenance of community interests is a permissible consideration, racial fairness is mandatory.

Your submission fails to disclose a sufficient justification for rejection of available alternative plans with total population deviations below ten percent that would have avoided unnecessary Hispanic population fragmentation while keeping intact the identified black and Asian communities of interest in Seaside and Marina. The proposed redistricting plan appears deliberately to sacrifice federal redistricting requirements, including a fair recognition of Hispanic voting strength, in order to advance the political interests of the non-minority residents of northern Monterey County.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. See Georgia v. United States, 411 U.S. 526 (1973); see also the 28 C.F.R. 51.52. In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that your burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the Ordinance No. 3653, the redistricting plan for the Monterey County Board of Supervisors.

We note that under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed change has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. In addition, you may request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the redistricting plan continues to be legally unenforceable. 28 C.F.R. 51.10 and 51.45.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the Monterey County Board of Supervisors plans to take concerning this matter. If you have any questions, you should call Robert A. Kengle (202-514-6196), an attorney in the Voting Section.

Since the Section 5 status of the proposed redistricting plan has been placed at issue in the Gonzalez case, we are providing a copy of this letter to the court and counsel of record in that case.

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

cc: Honorable William A. Ingram
United States District Judge

Counsel of Record

U.S. Department of Justice

Civil Rights Division

4004

Office of the Assistant Attorney General

Washington, D.C. 20035

April 5, 1993

Michael J. Noland, Esq.
Kahn, Soares & Conway
P.O. Box 1376
Hanford, California 93232

Dear Mr. Noland:

This refers to 73 annexations to the City of Hanford in Kings County, California, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your responses to our request for additional information on February 2 and March 25, 1993.

We note that this submission marks the first time the City of Hanford has sought Section 5 preclearance for any annexation despite the fact that the city has been covered by Section 5 since September 23, 1975, and preclearance is required for any change affecting voting, including an annexation, "different from that in force or effect on November 1, 1972." 42 U.S.C. 1973c; Procedures for the Administration of Section 5, Appendix. This record of noncompliance is particularly striking because, as noted below, nearly half of the city's current population resides in these unprecleared annexed areas. Moreover, the city appears to have implemented other voting changes since November 1, 1972, without the requisite preclearance. We encourage the city promptly to take all steps necessary to bring the city into full compliance with Section 5.

With regard to the annexation adopted on September 11, 1972, (Ordinance No. 1205), the Attorney General will make no determination regarding the specified change since it was implemented prior to November 1, 1972, and is not subject to the preclearance requirements of Section 5. See 28 C.F.R. 51.4 and 51.35.

With regard to the annexations identified in Attachment A, each of which you have identified as commercial/industrial and uninhabited, the Attorney General does not interpose any objection to the specified changes. However, we note that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the changes. See 28 C.F.R. 51.41.

We cannot reach the same conclusion with regard to the annexations identified in Attachment B, each of which is residential. We have considered carefully the information you have provided, as well as Census data and comments and information from other interested persons. Because the city failed to seek preclearance of the annexations identified in Attachment B in a timely manner upon their adoption, we must review the cumulative effect of the annexations at this time, based on the most current available population data. In addition, it appears that the persons who reside in the annexed areas became city residents from areas outside the city and are not, for the most part, persons who moved from the pre-annexation city to the annexed areas. See City of Rome v. United States, 446 U.S. 156, 186-87 (1980); City of Pleasant Grove v. United States, C.A. No. 80-2589 (D. D.C. Oct. 7, 1981); 28 C.F.R. 51.54(b)(2).

Based on the data available to us, the city's population, excluding the persons residing in the annexed areas identified in Attachment B is 16,224, of whom 5,831 (35.9 percent) are Hispanic. The annexations identified in Attachment B add approximately 14,977 persons as city residents, only 3,346 of whom (22 percent) are Hispanic. Thus, the effect of these annexations is to decrease the Hispanic proportion of the city's pre-annexation population by approximately 6.5 percentage points, from 35.9 percent to 29.4 percent.

The city has an at-large election system for city councilmembers, with staggered terms and a plurality-win requirement. Our analysis of the information available to us suggests that Hispanic voters have preferred Hispanic candidates in recent elections, but have been unable to elect those candidates due to an apparent pattern of polarized voting. In these circumstances, the reduction in the Hispanic share of the city's population, as effected by the residential annexations, which have been implemented in past elections, appears to have diminished whatever opportunity would exist for Hispanic voters in the pre-annexation city to elect representatives of their choice to the city council.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that submitted changes have neither a discriminatory purpose nor a discriminatory effect. Georgia v. United States, 411 U.S. 526 (1973); see also 28 C.F.R. 51.52. Annexations that result, as here, in a significant decrease in the minority proportion of a city's population have such a proscribed effect, and, therefore, may satisfy Section 5 only if the method used for electing the city's governing body "fairly reflects the strength of the [minority] community as it exists after the annexation." City of Richmond v. United States, 422 U.S. 358, 370-71 (1975); see also City of Rome, supra at 187. In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that the city's burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the proposed annexations identified in Attachment B.

We note that under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed annexations identified in Attachment B have neither the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. In addition, you may request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the proposed annexations identified in Attachment B continue to be legally unenforceable insofar as they affect voting. See Dotson v. City of Indianola, 514 F. Supp. 397, 403 (N.D. Miss. 1981 (three-judge court) (municipal residents of areas annexed after Section 5 coverage date may not participate in municipal elections unless and until the annexations receive Section 5 preclearance). See also Clark v. Roemer, 111 S.Ct. 2096 (1991); 28 C.F.R. 51.10 and 51.45.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the City of Hanford plans to take concerning these matters. If you have any questions, you should call Ms. Zita Johnson-Betts (202-514-8690), an attorney in the Voting Section.

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

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Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

Attachment A

City's Annex. #	Date of Adoption	Ordinance No.
23	December 26, 1972	1221
24	February 26, 1973	1235
27	June 25, 1973	1260
28	November 13, 1973	1287
29	July 23, 1973	1284
32	October 16, 1974	1359
41	July 22, 1975	1404
42	February 10 1976	869
48	July 18, 1977	1505
49	July 18, 1977	1504
53	May 1, 1978	1546
80	May 19, 1980	1678
82	February 2, 1981	1710
89	September 16, 1986	86-28
103	June 5, 1990	90-21

Attachment B

City's Annex. #	Date of Adoption	Ordinance No.
18	November 13, 1972	808
20	August 13, 1973	1268
21	September 24, 1973	820
22	September 10, 1973	818
25	September 10, 1973	915
26	June 25, 1973	1259
30	July 23, 1974	836
31	October 9, 1973	1279
33	April 9, 1974	1315
35	May 27, 1975	1394
36	November 26, 1974	841
37	November 26, 1974	842
38	September 24, 1974	838
39	October 14, 1975	864
43	August 1, 1977	1508
47	June, 6, 1977	1494
50	September 19, 1977	1515-A
51	September 19, 1977	1516
52	September 19, 1977	1517
54	March 6, 1978	1531
55	July 17, 1978	1558
56	July 17, 1978	1559
61	August 7, 1978	1564
62	February 5, 1979	1618
63	September 5, 1978	
64	February 5, 1979	1597
65	November 6, 1978	1580
66	December 4, 1978	1589
67	April 16, 1979	1609
68	May 7, 1979	1612
69	June 4, 1979	1620
72	September 2, 1980	1704
73	February 19, 1980	1660
74	February 19, 1980	1661
75	June 2, 1980	1684
76	June 2, 1980	1683
77	April 7, 1980	1668
78	September 15, 1980	1713
79	July 21, 1980	1688
81	October 6, 1980	1714
83	May 5, 1981	1740
84	January 5, 1982	1778
86	April 19, 1983	1852
87	April 1, 1986	86-4
88	October 18, 1983	1890
90	October 7, 1986	86-32
91	September 29, 1987	87-22
92	February 17, 1987	87-8
93	January 16, 1987	87-23

Attachment B Con't

94	January 19, 1988	88-02
95	November 3, 1987	87-42
96	June 7, 1988	88-20
98	September 18, 1990	89-43
99	December 5, 1989	90-51
101	September 18, 1990	90-52
102	May 15, 1990	90-18
104	March 3, 1992	92-10

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

4005

MAR 29 2002

William D. Barr, Ed.D.
Superintendent of Schools
Monterey County Office of Education
P.O. Box 80851
Salinas, California 93912-0851

Dear Dr. Barr:

This refers to the change in the method of electing school trustees from districts to at large for the Chualar Union Elementary School District in Monterey County, California, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your responses to our September 19, 2000, request for additional information on April 20, 2001, and January 31, 2002.

We have carefully considered the information you have provided, as well as census data, comments and information from other interested parties, and other information, including the district's previous submission, which instituted the districting system for the election of trustees. Based on our analysis of the information you have provided, on behalf of the Attorney General, I am compelled to object to the submitted change in the method of election.

According to the 2000 Census, the school district has a total population of 2,365, of whom 1,846 (78.1%) are Hispanic. Hispanic residents comprise 74.4 percent of the voting age population. Approximately 55 percent of the registered voters in the district are Spanish-surnamed individuals.

Prior to 1995, the school district elected its five-member board of trustees on an at-large basis. At that time, the majority-Hispanic board, enacted the method of election currently in effect. Hispanic voters under this system have the opportunity to elect candidates of choice in a three-person, multi-member election district, Trustee Area 3, which has a Hispanic population percentage of over 90 percent. The school district now proposes to reinstitute the at-large method of election. Our analysis persuades us that the school district has not established, as it must, that this change in the method of election is not being implemented for the purpose of effectuating a retrogression in minority voters' effective exercise of the electoral franchise and that it will not have such a proscribed effect.

We have examined the circumstances surrounding the initiation of the petition drive, which led to the referendum on the proposed change. The starting point of our analysis concerning whether the petition was motivated by an intent to retrogress is Village of Arlington Heights v. Metropolitan Housing Development Corp., 429 U.S. 252 (1977). There, the Supreme Court identified the analytical structure for determining whether racially discriminatory intent exists. This approach requires an inquiry into: 1) the impact of the decision; 2) the historical background of the decision, particularly if it reveals a series of decisions undertaken with discriminatory intent; 3) the sequence of events leading up to the decision; and 4) whether the challenged decision departs, either procedurally or substantively, from the normal practice, and contemporaneous statements and viewpoints held by the decision-makers. Id. at 266-268.

As we understand it, the actions of the trustees elected from Area 3, a majority-Hispanic district, regarding the tenure of the district's superintendent of schools provided the impetus for the petition drive. The cover letter, which accompanied the petition, made note of this activity and then attacked the credibility of the trustees from that district, citing the language skills of one trustee and making unfavorable references to the language preferences of another. The language and tone of the letter raises the implication that the petition drive and resulting change was motivated, at least in part, by a discriminatory animus. This conclusion is further supported by statements made by proponents of the petition during our investigation.

Moreover, the petition focused on the actions of the persons elected by the Hispanic community in Area 3. However, over 90 percent of the persons signing the petition did not reside in that district. Rather, they were residents of Area 1, virtually all of whom were not Spanish-surnamed persons.

There is also evidence that the change will, in fact, have a retrogressive effect. Under the at-large system in the past, Hispanic voters have had only mixed success, and have faced consistent efforts - sometimes successful - to recall the candidates they have elected. Since the implementation of district elections, Hispanic voters have been able to elect candidates of choice, who have not been subject to recall by non-Hispanic voters. It is also apparent that even though voter registration is majority Spanish surnamed, this majority is not large and other voters often have been able to defeat Hispanic candidates of choice in district-wide elections. Indeed, during the referendum election which took place under highly charged, racially polarized circumstances, the non-Hispanic proponents easily defeated the Hispanic opposition.

The school district has failed to establish that the reversion to an at-large method of election will offer the same ability to Hispanic voters to exercise the electoral franchise that they enjoy currently. A voting change has a discriminatory effect if it will lead to a retrogression in the position of members of a racial or language minority group (i.e., will make members of such a group worse off than they had been before the change) with respect to their opportunity to exercise the electoral franchise effectively. Reno v. Bossier Parish School Board, 528 U.S. 320, 328 (2000); Beer v. United States, 425 U.S. 130, 140-42 (1976).

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.52). In light of the considerations discussed above, I cannot conclude that your burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the change in the method of election.

We note that under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed change neither has the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. See 28 C.F.R. 51.44. In addition, you may request that the Attorney General reconsider the objection. See 28 C.F.R. 51.45. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the submitted plan continues to be legally unenforceable. Clark v. Roemer, 500 U.S. 646 (1991); 28 C.F.R. 51.10.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the Chualar Union Elementary School District plans to take concerning this matter. If you have any questions, you should call Ms. Judith Reed (202-305-0164), an attorney in the Voting Section.

Sincerely,

Ralph F. Boyd, Jr.
Assistant Attorney General
Civil Rights Division

PREPARED STATEMENT OF ROBERT RUBIN, LEGAL DIRESCTOR, LAWYERS' COMMITTEE FOR CIVIL RIGHTS OF THE SAN FRANCISCO BAY AREA, BEFORE THE NATIONAL COMMISSION ON THE VOTING RIGHTS ACT, SEPTEMBER 27, 2005

NATIONAL COMMISSION ON THE VOTING RIGHTS ACT
WESTERN REGIONAL HEARING
September 27, 2005

TESTIMONY OF ROBERT RUBIN, LEGAL DIRECTOR
LAWYERS' COMMITTEE FOR CIVIL RIGHTS OF THE SAN FRANCISCO BAY AREA

Introduction

The purpose of this testimony is to provide a summary of the Voting Rights Act ("VRA") Section 5 matters, and related issues, addressed by the Lawyers' Committee for Civil Rights of the San Francisco Bay Area ("LCCR") over the past several years. It is intended to serve as a backdrop to the upcoming Congressional hearings on the reauthorization of § 5. I will discuss three § 5 matters as well as two actions brought under the California Voting Rights Act ("CVRA"), a state law that provides remedies similar to those available under § 2 of the VRA.

The first § 5 case is *Lopez v. Monterey*, 525 U.S. 266 (1999), in which the Supreme Court ruled that § 5-covered counties must comply with the § 5 preclearance requirement[1] even when the voting change they are implementing is pursuant to a statewide law and the state itself is not a covered jurisdiction. In the second matter, the Chualar Union Elementary School District sought to revert from district elections to an at-large voting system to elect its representatives. After the LCCR intervened, the Department of Justice ("DOJ") issued a Letter of Objection, stating that the School District failed to meet its burden of showing that the change would not be retrogressive. The DOJ cited evidence indicating both a discriminatory intent in initiating the change

[1] Section 5-covered jurisdictions must obtain preclearance for voting changes prior to enacting or seeking to administer any such changes. 42 U.S.C. § 1973(c). To secure preclearance, the jurisdiction must demonstrate that the change is not retrogressive, *i.e.*, does not leave the minority community in worse position in terms of voting strength than before the change. *See* Beer v. U. S. 425 U.S. 130,141 (1976).

and evidence that the proposed change would in fact be retrogressive of minority voting strength. Finally, in *Oliverez v. California*, C-03-03658 (N.D. Cal. 2003), Latino voters in Monterey County brought suit to enjoin the 2003 special gubernatorial election unless and until the County obtained preclearance for changes in the siting of voting precincts.

1. Lopez v. Monterey

Latino voters brought this § 5 action challenging implementation of an at-large election system for municipal judges that had not been precleared by the Justice Department. Pending final resolution of the case, and with an election upcoming, the district court determined that it could not fashion a districting plan that would comply with both § 5 and the Supreme Court's then-recent decision in *Miller v. Johnson,* 515 U.S. 900 (1995) which limited the extent to which racial considerations can be used in districting. Instead, the district court ordered the upcoming elections to be held under the same unprecleared at-large scheme originally challenged in the litigation. This decision was reversed by the U.S. Supreme Court, which mandated that, even as an interim measure, the at-large election system could not be implemented unless and until it is precleared. *Lopez v. Monterey* 519 U.S. 9 (1996) ("*Lopez I*").

Upon remand, the district court dismissed the case on the ground that the change to an at-large system was a product of state law and thus, not subject to § 5. The district court reasoned "that California is not subject to the preclearance requirement and that Monterey County merely implemented a California law without exercising any independent discretion." *Lopez v. Monterey* 525 U.S. 266, 269 (1999) ("*Lopez II*"). Thus, the Supreme Court was asked to decide whether § 5's preclearance requirements, which

reached Monterey County but did not apply to the state of California, should be applied to the county's implementation of a state-mandated change.

The Supreme Court once again reversed the district court, holding that the Act's preclearance requirements apply to measures mandated by a noncovered State to the extent that these measures will effect a voting change in a covered county. *Id.* The Court stated that the VRA, which was enacted subject to the 15th Amendment, permitted substantial intrusion into state sovereignty. *Id. at 284-85.* Thus the Court held that even though the state of California was not covered by § 5, locally covered jurisdictions within the state are still "obligated to seek preclearance under § 5 before giving effect to voting changes required by state law." *Id. at 287.* In other words, § 5 focuses on whether voting practices in the covered jurisdiction have changed, and not the legislative source of that change.

2. DOJ Letter of Objection to the Chualar Union Elementary School District

On July 14, 2000, the Monterey County Committee on School District Organization submitted for preclearance a plan that would return the Chualar Union Elementary School District Board of Trustees from a district election system to an at-large election system. The proposed change was submitted pursuant to a petition that led to a successful ballot measure that authorized the School District to return to an at-large system. The school district had an almost 75 percent Latino voting age population (exact citizen voting age population figures were not readily available) and approximately 55 percent of the registered voters were Spanish surnamed. Despite these figures, the DOJ still issued a Letter of Objection to the proposed voting change. The DOJ denied preclearance because the school district had not met its burden of establishing that the proposed voting change

would not have the purpose or effect of retrogression on Latino voting strength. The DOJ cited evidence both of the intent to retrogress minority voting strength, and that the plan would in fact have a retrogressive effect. (DOJ Letter of Objection p. 2).

The DOJ found evidence that the petition drive to make the change to at-large elections "was motivated, at least in part, by a discriminatory animus." The cover letter for the petition drive "attacked the credibility of the trustees from that district, citing the language skills of one trustee and making unfavorable references to the language preferences of another." *Id.* The DOJ also found that 90% of the persons who signed the petition were non-Spanish surnamed people who lived outside the district. *Id. at 3.*

Finally, the DOJ determined that the proposed change would, in fact, have a retrogressive effect on Latino voting strength. The DOJ noted that under the previous at-large system: 1) Hispanic voters had experienced only mixed success and, 2) when they were successful they had faced constant, and sometimes successful efforts to recall the candidates that they had elected. *Id.* Indeed, the DOJ confirmed that during the successful referendum election, the non-Hispanic proponents easily defeated the Hispanic opposition "under highly charged, racially polarized circumstances." *Id.* Thus, DOJ concluded, the school district had failed to meet its burden of showing that the "at-large method of election will offer the same ability to Hispanic voters to exercise the electoral franchise that they enjoy currently." *Id.*

3. <u>Oliverez v. California</u>

In August of 2003, Lawyers' Committee brought a suit on behalf of Latino voters seeking to enjoin the gubernatorial recall election that was to take place on October 7, 2003. *Oliverez v. California, supra.* This suit was based on Monterey County's failure to

obtain preclearance from the Department of Justice for the voting changes to precinct locations that were to be implemented in the special election. (Comp. at 1).

In order to accommodate the abbreviated election schedule, Monterey County sought to consolidate its voting precincts and otherwise reduce the number of polling places. (Comp. at 17). Plaintiffs sought an injunction preventing the recall election from proceeding until California's covered jurisdictions sought and received preclearance.

The Plaintiffs noted at least 17 instances in which the proposed change in polling places would have a retrogressive effect on the Latino community. One proposed change would move a polling place almost 5 miles away from a predominantly Latino community to a new site without easy access to public transportation. Another proposed consolidation would close two school-site polling places in predominantly Latino communities and force voters to cast their ballots at the Sheriff's Posse Club House, a hunting club in a predominantly Anglo area and clearly a site that would discourage Latino voters. Based on the fact that these polling place reductions and other changes "constituted changes in voting procedures within the meaning of Section 5" (OSC 1:25-28) and that Monterey County had not complied with the § 5 preclearance requirements, the district court issued a Temporary Restraining Order restraining the mailing of overseas ballots and issued an Order to Show Cause why the County should not be restrained and enjoined from administering the special election until § 5 preclearance had been obtained. (OSC 4:1-13) Only after reinstating most of the polling places did Monterey County receive DOJ preclearance to conduct the special election.

4. California Voting Rights Act

The LCCR also has brought two cases under the California Voting Rights Act of 2001 ("CVRA") challenging at-large election schemes that are characterized by racially polarized voting. The CVRA was enacted so that no group of voters, whatever their race, would be deprived by racially polarized voting in at-large elections of its ability to elect candidates or influence the outcome of elections. The CVRA is substantially similar to §2 of the federal VRA but specifically eliminates the geographical compactness requirement that the Supreme Court in *Thornburg v. Gingles,* 478 U.S. 30 (1986) determined was a precondition to establishing a *prima facie* claim of vote dilution under § 2. *See* Cal.Elec.Code § 14028(c). Further, the CVRA also contemplates the implementation of remedies tailored to the particular violation, allowing for alternative voting systems such as cumulative voting.

In the first case brought under the CVRA, *Sanchez, et al v. City of Modesto, et al,* Stanislaus Superior Court Case No. 347903, Latino voters challenged the at-large election system for the Modesto City Council. Members of Modesto's City Council are elected by an at-large voting system, which along with a racially polarized electorate, has repeatedly resulted in a city council with no Latino representatives. Despite a Latino population of approximately 25.6% in the City, no Latino occupies a seat on the City Council. No Latino has occupied a City Council seat since 1991 when the only Latino to ever hold this post left office. When a public initiative to implement district elections appeared on the ballot in 2001, a racially polarized electorate easily defeated it with only 35% of the voters supporting it. Modesto also uses election practices, such as majority vote requirements and run-off elections, which have historically been considered devices

for minority vote dilution. The suit against Modesto is currently on appeal to the Fifth Appellate District after the trial court upheld a facial constitutional attack on the CVRA.

In the second case filed under the CVRA, *Gomez, et al. v. Hanford Joint Union High School District, et al*, Kings County Superior Court Case No. 04C0294, Latino voters challenged an at-large high school district election system. Under the at-large election system, the Hanford Joint Union High School District Board of Trustees has had no Latino representative among its five members in the last twenty years, despite the large and growing Latino population in the district, which is currently estimated at 38.6%.

At least as early as 1993, the United States Attorney General described elections in the City of Hanford as characterized by racially polarized voting. During this same period, Latino voters in Hanford filed suit under § 5 of the federal VRA. While this suit was pending, the City of Hanford changed its method of electing City Council members from an at-large election system to district-based elections. At least two Latinos have been elected to the Hanford City Council since the district-based system of elections was implemented in 1994.

The School District has agreed to settle the current lawsuit and convert to district elections. Pending § 5 approval, the new election plan will include the creation of two Latino influence districts.

Westlaw.

86 S.Ct. 803
383 U.S. 301, 86 S.Ct. 803, 15 L.Ed.2d 769
(Cite as: 383 U.S. 301, 86 S.Ct. 803)

Supreme Court of the United States
STATE OF SOUTH CAROLINA, Plaintiff,
v.
Nicholas deB. KATZENBACH, Attorney General of the United States.
No. 22, Original.

Argued Jan. 17, 18, 1966.
Decided March 7, 1966.

Bill in equity for determination of validity of selected provisions of Voting Rights Act of 1965 and for injunction against enforcement of provisions by United States Attorney General. The Supreme Court, Mr. Chief Justice Warren, held that provisions of Voting Rights Act of 1965 pertaining to suspension of eligibility tests or devices, review of proposed alteration of voting qualifications and procedures, appointment of federal voting examiners, examination of applicants for registration, challenges to eligibility listings, termination of listing procedures, and enforcement proceedings in criminal contempt cases were appropriate means for carrying out Congress' constitutional responsibilities under the Fifteenth Amendment and were consonant with all other provisions of the Constitution.

Bill dismissed.

Mr. Justice Black dissented in part.

West Headnotes

[1] Federal Courts ⚿274
170Bk274 Most Cited Cases
(Formerly 106k305)
Original jurisdiction of bill in equity for determination of constitutionality of provisions of Voting Rights Act of 1965 was founded on presence of controversy between a state and citizen of another state. Voting Rights Act of 1965, § 2 et seq., 42 U.S.C.A. § 1973 et seq.; U.S.C.A.Const. art. 3, § 2.

[2] Elections ⚿10
144k10 Most Cited Cases
Voting Rights Act of 1965 was designed by Congress to banish racial discrimination in voting. Voting Rights Act of 1965, § 2 et seq., 42 U.S.C.A. § 1973 et seq.

[3] Elections ⚿18
144k18 Most Cited Cases

[3] Elections ⚿19
144k19 Most Cited Cases
Provisions of Voting Rights Act of 1965 pertaining to suspension of eligibility tests or devices, review of proposed alteration of voting qualifications and procedures, appointment of federal voting examiners, examination of applicants for registration, challenges to eligibility listings, termination of listing procedures, and enforcement proceedings in criminal contempt cases were appropriate means for carrying out Congress' constitutional responsibilities under the Fifteenth Amendment and were consonant with all other provisions of the Constitution. Voting Rights Act of 1965, §§ 4(a-d), 5, 6(b), 7, 9, 13(a), 14, 42 U.S.C.A. §§ 1973b(a-d), 1973c, 1973d(b), 1973e, 1973g, 1973k(a), 1973l.

[4] Constitutional Law ⚿47
92k47 Most Cited Cases
Constitutional propriety of Voting Rights Act of 1695 was to be judged with reference to historical experience which it reflected. Voting Rights Act of 1695, § 2 et seq., 42 U.S.C.A. § 1973 et seq.

[5] Constitutional Law ⚿46(1)
92k46(1) Most Cited Cases
Absent showing by state that any person had been subjected to or threatened with criminal sanctions authorized by provisions of Voting Rights Act of 1965 defining prohibited acts and setting forth civil and criminal sanctions for commission of prohibited acts, state's attack on such provisions was premature. Voting Rights Act of 1965, §§ 11, 12(a-c), 42 U.S.C.A. §§ 1973i, 1973j(a-c).

[6] Constitutional Law ⚿252
92k252 Most Cited Cases
Word "person" in context of due process clause of the Fifth Amendment cannot be expanded to encompass states of the union. U.S.C.A.Const. Amend. 5.

[7] Constitutional Law ⚿50
92k50 Most Cited Cases

[7] Constitutional Law ⚿82.5
92k82.5 Most Cited Cases
(Formerly 92k82)
Bill of attainder clause and principle of separation of powers are intended only as protections for individual persons and private groups, those who are peculiarly vulnerable to nonjudicial determinations of guilt. U.S.C.A.Const. art. 1.

[8] Constitutional Law ⚿42.3(3)
92k42.3(3) Most Cited Cases
(Formerly 92k42)
State is without standing as parent of its citizens to invoke due process clause of Fifth Amendment and bill of attainder clause of Article 1 against federal government. U.S.C.A.Const. art. 1.

[9] United States ⚿1
393k1 Most Cited Cases
Federal government is ultimate parens patriae of every American citizen.

[10] Constitutional Law ⚿42.3(3)
92k42.3(3) Most Cited Cases
(Formerly 92k42)
State was without standing to assert invalidity of provisions of Voting Rights Act of 1965 based on due process, bill of attainder, or separation of powers arguments. Voting Rights Act of 1965, §§ 4(a-d), 5, 6(b), 9, 14(b), 42 U.S.C.A. §§ 1973b(a-d), 1973c, 1973d(b), 1973g, 1973l(b); U.S.C.A.Const. art. 1; U.S.C.A.Const. Amend. 5.

[11] States ⚿4.16(2)
360k4.16(2) Most Cited Cases
(Formerly 360k4.17, 361k4.17)
As against reserved powers of states, Congress may use any rational means to effectuate constitutional prohibition of racial discrimination in voting. U.S.C.A.Const. Amend. 15.

[12] Constitutional Law ⚿32
92k32 Most Cited Cases

[12] Elections ⚿11
144k11 Most Cited Cases
Fifteenth Amendment prohibition against denial of right to vote on account of race, color or previous condition of servitude is self-executing and invalidates state voting qualifications or procedures which are discriminatory on their face or in practice. U.S.C.A.Const. Amend. 15, § 1.

[13] Elections ⚿18
144k18 Most Cited Cases

[13] Elections ⚿19
144k19 Most Cited Cases
States have broad powers to determine conditions under which right of suffrage may be exercised.

[14] Elections ⚿11
144k11 Most Cited Cases
Fifteenth Amendment supersedes contrary exertions of state power. U.S.C.A.Const. Amend. 15.

[15] Federal Courts ⚿6
170Bk6 Most Cited Cases
(Formerly 106k260.3)
When state exercises power wholly within domain of state interest, it is insulated from federal judicial review, but such insulation is not carried over when state power is used as instrument for circumventing federally protected right.

[16] Elections ⚿4
144k4 Most Cited Cases
Provision of Fifteenth Amendment granting to

Congress power to enforce amendment by appropriate legislation was intended to make Congress chiefly responsible for implementing rights created by amendment. U.S.C.A.Const. Amend. 15, § 2.

[17] Elections ⚿12(2.1)
144k12(2.1) Most Cited Cases
(Formerly 144k12(2), 144k12)
Congress, in addition to courts, has full remedial powers to effectuate constitutional prohibition against racial discrimination in voting. U.S.C.A.Const. Amend. 15, § 2.

[18] Constitutional Law ⚿52
92k52 Most Cited Cases

[18] Elections ⚿4
144k4 Most Cited Cases
Allowing Congress to strike down state statutes and procedures by enactment of Voting Rights Act of 1965 deprived courts of no exclusive constitutional role but was, on the contrary, in accord with express terms of Fifteenth Amendment that "Congress shall have the power to enforce this article by appropriate legislation". U.S.C.A.Const. Amend. 15, § 2.

[19] Elections ⚿4
144k4 Most Cited Cases

[19] States ⚿4.16(1)
360k4.16(1) Most Cited Cases
(Formerly 360k4.16)
Basic test to be applied in all cases concerning express powers of Congress with relation to reserved powers of states, including cases involving Fifteenth Amendment's grant of power to enforce amendment by appropriate legislation, is that laid down by Marshall: "Let the end be legitimate, let it be within the scope of the constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the constitution, are constitutional". U.S.C.A.Const.Amend. 15, § 2.

[20] Civil Rights ⚿1005
78k1005 Most Cited Cases
(Formerly 78k103, 78k2.1, 78k2)

[20] Elections ⚿4
144k4 Most Cited Cases
Whatever legislation is appropriate, that is, adapted to carry out the objects the Civil War amendments have in view, whatever tends to enforce submission to the prohibitions they contain, and to secure to all persons the enjoyment of perfect equality of civil rights and the equal protection of the laws against State denial or invasion, if not prohibited, is brought within the domain of congressional power.

[21] Elections ⚿4
144k4 Most Cited Cases
Power of Congress to enforce Fifteenth Amendment by appropriate legislation is complete in itself, may be exercised to its utmost extent, and acknowledges no limitations other than are prescribed in Constitution. U.S.C.A.Const. Amend. 15, § 2.

[22] Elections ⚿9
144k9 Most Cited Cases
Inclusion in Voting Rights Act of 1965 of remedies for voting discrimination which go into effect without any need for prior adjudication was legitimate response to problem, where Congress had found that case-by-case litigation was inadequate to combat widespread and persistent voting discrimination because of inordinate amount of time and energy required to overcome obstructionist tactics invariably encountered in such lawsuits. Voting Rights Act of 1965, § 4(a-d), 42 U.S.C.A. § 1973b (a-d).

[23] Elections ⚿9
144k9 Most Cited Cases

[23] States ⚿5(1)
360k5(1) Most Cited Cases
(Formerly 360k5)
Provisions of Voting Rights Act of 1965 confining

remedies for voting discrimination to small number of states and political subdivisions was permissible method of dealing with problem where Congress had learned that substantial voting discrimination was taking place in certain sections of country and it knew no way of accurately forecasting whether evil might spread elsewhere in future, and such approach was not barred by doctrine of equality of states. Voting Rights Act of 1965, § 4(a-d), 42 U.S.C.A. § 1973b(a-d).

[24] States ⚿5(1)
360k5(1) Most Cited Cases
(Formerly 360k5)
Doctrine of equality of states applies only to terms upon which states are admitted to union and not to remedies for local evils which have subsequently appeared.

[25] Elections ⚿9
144k9 Most Cited Cases
Imposition of remedies provided by Voting Rights Act of 1965 in states and political subdivisions within Act's coverage formula was within congressional power under Fifteenth Amendment. Voting Rights Act of 1965, § 4(b), 42 U.S.C.A. § 1973b (b); U.S.C.A.Const. Amend. 15.

[26] Constitutional Law ⚿50
92k50 Most Cited Cases
In identifying past evils, Congress may avail itself of information from any probative source.

[27] Elections ⚿9
144k9 Most Cited Cases
Voter registration tests and devices are relevant to voting discrimination because of their long history as tool for perpetrating evil; similarly, low voting rate is pertinent for obvious reason that widespread disenfranchisement must inevitably affect number of actual voters; accordingly, Voting Rights Act of 1965 coverage formula is rational in both practice and theory. Voting Rights Act of 1965, § 4(b), 42 U.S.C.A. § 1973b (b); U.S.C.A.Const. Amend. 15.

[28] Elections ⚿9
144k9 Most Cited Cases
Congress is not bound by rules relating to statutory presumptions in criminal cases when it prescribes civil remedies against other organs of government under Fifteenth Amendment. U.S.C.A.Const. Amend. 15.

[29] Elections ⚿9
144k9 Most Cited Cases
That Voting Rights Act of 1965 coverage formula excluded certain localities which did not employ voting tests and devices but for which there was evidence of voting discrimination by other means was irrelevant in determining propriety of extension of formula in particular states and political subdivisions. Voting Rights Act of 1965, § 4(b), 42 U.S.C.A. § 1973b (b); U.S.C.A.Const. Amend. 15.

[30] Constitutional Law ⚿208(1)
92k208(1) Most Cited Cases
Legislation need not deal with all phases of problem in same way so long as distinctions drawn have some basis in practical experience.

[31] Elections ⚿9
144k9 Most Cited Cases
That there were no states or political subdivisions exempted from coverage under Voting Rights Act of 1965 in which record revealed recent racial discrimination involving tests and devices confirmed rationality of coverage formula. Voting Rights Act of 1965, § 4(b), 42 U.S.C.A. § 1973b(b); U.S.C.A.Const. Amend. 15.

[32] Federal Courts ⚿1.1
170Bk1.1 Most Cited Cases
(Formerly 170Bk1, 106k258)
Inclusion in Voting Rights Act of 1965 of provision that litigation to terminate special statutory coverage might be brought only in United States District Court for the District of Columbia was within power of Congress to ordain and establish inferior federal

tribunals. Voting Rights Act of 1965, § 4(a, b), 42 U.S.C.A. § 1973b(a, b); U.S.C.A.Const. art. 3, § 1.

[33] Elections ⚿9
144k9 Most Cited Cases
Procedures to terminate special statutory coverage under Voting Rights Act of 1965 were not shown to impose impossible burden upon states or political subdivisions which might seek relief, particularly since relevant facts relating to conduct of voting officials are peculiarly within knowledge of states and political subdivisions themselves. Voting Rights Act of 1965, § 4(a-d), 42 U.S.C.A. § 1973b(a-d); U.S.C.A.Const. Amend. 15.

[34] Elections ⚿9
144k9 Most Cited Cases
Provision of Voting Rights Act of 1965 barring direct judicial review of findings by Attorney General and Director of Census which trigger application of coverage formula was not invalid on theory that it allowed new remedies to be imposed in arbitrary way since such findings consisted of objective statistical determinations by Census Bureau and routine analysis of state statutes by Justice Department, neither of which was likely to arouse any plausible dispute, and since affected area could in any event seek termination of coverage if it could prove it had not been guilty of voting discrimination in recent years. Voting Rights Act of 1965, § 4(b, d), 42 U.S.C.A. § 1973b(b, d); U.S.C.A.Const. Amend. 15.

[35] Elections ⚿12(5)
144k12(5) Most Cited Cases
(Formerly 144k12)
Where in most of states within Voting Rights Act of 1965 coverage formula, various voting tests and devices had been instituted with purpose of disenfranchising Negroes, had been framed in such a way as to facilitate aim, and had been administered in discriminatory fashion for many years, Fifteenth Amendment was violated. Voting Rights Act of 1965, § 2 et seq., 42 U.S.C.A. § 1973 et seq.; U.S.C.A.Const. Amend. 15.

[36] Elections ⚿9
144k9 Most Cited Cases
Provision of Voting Rights Act of 1965 suspending literacy tests and similar devices for a period of five years from last occurrence of substantial voting discrimination was legitimate response to problem in view of practice of affected states and political subdivisions of freely registering white illiterates and in view of congressional determination that continuance of tests and devices presently in use would freeze effect of past discrimination in favor of unqualified white registrants. Voting Rights Act of 1965, § 4(a-d), 42 U.S.C.A. § 1973b(a-d); U.S.C.A.Const. Amend. 15.

[37] Constitutional Law ⚿38
92k38 Most Cited Cases
Exceptional conditions can justify legislative measures not otherwise appropriate.

[38] Elections ⚿9
144k9 Most Cited Cases
Provision of Voting Rights Act of 1965 suspending new voting regulations pending scrutiny by federal authorities to determine whether their use would violate Fifteenth Amendment was valid in view of congressional determination that states might otherwise adopt new rules of various kinds for sole purpose of perpetuating voting discrimination in circumvention of act. Voting Rights Act of 1965, § 5, 42 U.S.C.A. § 1973c.

[39] Elections ⚿9
144k9 Most Cited Cases

[39] Federal Courts ⚿1.1
170Bk1.1 Most Cited Cases
(Formerly 170Bk1, 106k258)
Requiring states and political subdivisions within Voting Rights Act of 1965
coverage formula to litigate validity of proposed new voting rules in United States District Court for the District of Columbia and placing burden of proof on

area seeking relief was not beyond congressional power and did not authorize District Court to issue advisory opinions. Voting Rights Act of 1965, § 5, 42 U.S.C.A. § 1973c; U.S.C.A.Const. art. 3, §§ 1, 2.

[40] Elections ⚿9
144k9 Most Cited Cases
Provision of Voting Rights Act of 1965 pertaining to appointment of federal examiners to list qualified applicants was appropriate response to problem in view of congressional determination that state voting officials had persistently employed variety of procedural tactics to deny Negroes franchise often in direct defiance or evasion of federal decrees. Voting Rights Act of 1965, §§ 6(b), 7(d), 11(c), 42 U.S.C.A. §§ 1973d(b), 1973e(d), 1973i(c); U.S.C.A.Const. Amend. 15.

[41] Elections ⚿51
144k51 Most Cited Cases
Attorney General's discretion in appointing federal voting examiners was not unlimited but was to be guided by relevant provisions of Voting Rights Act of 1965. Voting Rights Act of 1965, §§ 4(b), 6(b), 13(a), 42 U.S.C.A. §§ 1973b(b), 1973d(b), 1973k(a).

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***307** Mr. Chief Justice WARREN delivered the opinion of the Court.

[1] By leave of the Court, 382 U.S. 898, 86 S.Ct. 229, South Carolina has filed a bill of complaint, seeking a declaration that selected provisions of the Voting Rights Act of 1965 [FN1] violate the Federal Constitution, and asking for an injunction against enforcement of these provisions by the Attorney General. Original jurisdiction is founded on the presence of a controversy between a State and a citizen of another State under Art. III, s 2, of the Constitution. See State of Georgia v. Pennsylvania, R. Co., 324 U.S. 439, 65 S.Ct. 716, 89 L.Ed. 1051. Because no issues of fact were raised in the complaint, and because of South Carolina's desire to obtain a ruling prior to its primary elections in June 1966, we dispensed with appointment of a special master and expedited our hearing of the case.

FN1. 79 Stat. 437, 42 U.S.C. s 1973 et seq. (1964 ed., Supp. I).

Recognizing that the questions presented were of urgent concern to the entire country, we invited all of the States ****808** to participate in this proceeding as friends of the Court. A majority responded by submitting or joining in briefs on the merits, some supporting South Carolina and others the Attorney General. [FN2] Seven of these States ***308** also requested and received permission to argue the case orally at our hearing. Without exception, despite the emotional overtones of the proceeding, the briefs and oral arguments were temperate, lawyerlike and

constructive. All viewpoints on the issues have been fully developed, and this additional assistance has been most helpful to the Court.

FN2. States supporting South Carolina: Alabama, Georgia, Louisiana, Mississippi, and Virginia. States supporting the Attorney General: California, Illinois, and Massachusetts, joined by Hawaii, Indiana, Iowa, Kansas, Maine, Maryland, Michigan, Montana, New Hampshire, New Jersey, New York, Oklahoma, Oregon, Pennsylvania, Rhode Island, Vermont, West Virginia, and Wisconsin.

[2][3] The Voting Rights Act was designed by Congress to banish the blight of racial discrimination in voting, which has infected the electoral process in parts of our country for nearly a century. The Act creates stringent new remedies for voting discrimination where it persists on a pervasive scale, and in addition the statute strengthens existing remedies for pockets of voting discrimination elsewhere in the country. Congress assumed the power to prescribe these remedies from s 2 of the Fifteenth Amendment, which authorizes the National Legislature to effectuate by 'appropriate' measures the constitutional prohibition against racial discrimination in voting. We hold that the sections of the Act which are properly before us are an appropriate means for carrying out Congress' constitutional responsibilities and are consonant with all other provisions of the Constitution. We therefore deny South Carolina's request that enforcement of these sections of the Act be enjoined.

I.

[4] The constitutional propriety of the Voting Rights Act of 1965 must be judged with reference to the historical experience which it reflects. Before enacting the measure, Congress explored with great care the problem of racial discrimination in voting. The House and Senate Committees on the Judiciary each held hearings for nine days and received testimony from a total of 67 witnesses.*309 [FN3] More than three full days were consumed discussing the bill on the floor of the House, while the debate in the Senate covered 26 days in all. [FN4] At the close of these deliberations, the verdict of both chambers was overwhelming. The House approved the bill by a vote of 328-- 74, and the measure passed the Senate by a margin of 79--18.

FN3. See Hearings on H.R. 6400 before Subcommittee No. 5 of the House Committee on the Judiciary, 89th Cong., 1st Sess. (hereinafter cited as House Hearings); Hearings on S. 1564 before the Senate Committee on the Judiciary, 89th Cong., 1st Sess. U.S.Code Congressional and Administrative News, p. 480 (hereinafter cited as Senate Hearings).

FN4. See the Congressional Record for April 22, 23, 26, 27, 28, 29, 30; May 3, 4, 5, 6, 7, 10, 11, 12, 13, 14, 17, 18, 19, 20, 21, 24, 25, 26; July 6, 7, 8, 9; August 3 and 4, 1965.

Two points emerge vividly from the voluminous legislative history of the Act contained in the committee hearings and floor debates. First: Congress felt itself confronted by an insidious and pervasive evil which had been perpetuated in certain parts of our country through unremitting and ingenious defiance of the Constitution. Seond: Congress concluded that the unsuccessful remedies which it had prescribed in the past would have to be replaced by sterner and more elaborate measures in order to satisfy the clear commands of the Fifteenth Amendment. We pause here to summarize the majority reports of the House and Senate Committees, which document in considerable detail the factual basis for these **809 reactions by Congress. [FN5] See H.R.Rep. No. 439, 89th Cong., 1st Sess., 8--16 (hereinafter cited as House Report); S.Rep.No. 162, pt. 3, 89th Cong., 1st Sess., 3--16, U.S. Code Congressional and Administrative News,

p. 2437 (hereinafter cited as Senate Report).

FN5. The facts contained in these reports are confirmed, among other sources, by United States v. State of Louisiana, D.C., 225 F.Supp. 353, 363--385 (Wisdom, J.), aff'd, 380 U.S. 145, 85 S.Ct. 817, 13 L.Ed.2d 709; United States v. State of Mississippi, D.C., 229 F.Supp. 925, 983-- 997 (dissenting opinion of Brown, J.), rev'd and rem'd, 380 U.S. 128, 85 S.Ct. 808, 13 L.Ed.2d 717; United States v. State of Alabama, D.C., 192 F.Supp. 677 (Johnson, J.), aff'd, 5 Cir., 304 F.2d 583, aff'd, 371 U.S. 37, 83 S.Ct. 145, 9 L.Ed.2d 112; Comm'n on Civil Rights, Voting in Mississippi; 1963 Comm'n on Civil Rights, Rep., Voting; 1961 Comm'n on Civil Rights Rep., Voting, pt. 2; 1959 Comm'n on Civil Rights Rep., pt. 2. See generally Christopher, The Constitutionality of the Voting Rights Act of 1965, 18 Stan.L.Rev. 1; Note, Federal Protection of Negro Voting Rights, 51 Va.L.Rev. 1051.

*310 The Fifteenth Amendment to the Constitution was ratified in 1870. Promptly thereafter Congress passed the Enforcement Act of 1870, [FN6] which made it a crime for public officers and private persons to obstruct exercise of the right to vote. The statute was amended in the following year [FN7] to provide for detailed federal supervision of the electoral process, from registration to the certification of returns. As the years passed and fervor for racial equality waned, enforcement of the laws became spotty and ineffective, and most of their provisions were repealed in 1894. [FN8] The remnants have had little significance in the recently renewed battle against voting discrimination.

FN6. 16 Stat. 140.

FN7. 16 Stat. 433.

FN8. 28 Stat. 36.

Meanwhile, beginning in 1890, the States of Alabama, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, and Virginia enacted tests still in use which were specifically designed to prevent Negroes from voting. [FN9] Typically, they made the ability to read and write *311 a registration qualification and also required completion of a registration form. These laws were based on the fact that as of 1890 in each of the named States, more than two-thirds of the adult Negroes were illiterate while less than one-quarter of the adult whites were unable to read or write. [FN10] At the same time, alternate tests were prescribed in all of the named States to assure that white illiterates would not be deprived of the franchise. These included grandfather clauses, property qualifications, **810 'good character' tests, and the requirement that registrants 'understand' or 'interpret' certain matter.

FN9. The South Carolina Constitutional Convention of 1895 was a leader in the widespread movement to disenfranchise Negroes. Key, Southern Politics, 537--539. Senator Ben Tillman frankly explained to the state delegates the aim of the new literacy test: '(T)he only thing we can do as patriots and as statesmen is to take from (the 'ignorant blacks') every ballot that we can under the laws of our national government.' He was equally candid about the exemption from the literacy test for persons who could 'understand' and 'explain' a section of the state constitution: 'There is no particle of fraud or illegality in it. It is just simply showing partiality, perhaps, (laughter,) or discriminating.' He described the alternative exemption for persons paying state property taxes in the same vein: 'By means of the $300 clause you simply reach out and take in some more white men and a few more colored men.' Journal of the Constitutional Convention of the State of South Carolina

464, 469, 471 (1895). Senator Tillman was the dominant political figure in the state convention, and his entire address merits examination.

FN10. Prior to the Civil War, most of the slave States made it a crime to teach Negroes how to read or write. Following the war, these States rapidly instituted racial segregation in their public schools. Throughout the period, free public education in the South had barely begun to develop. See Brown v. Board of Education, 347 U.S. 483, 489--490, n. 4, 74 S.Ct. 686, 688--689, 98 L.Ed. 873; 1959 Comm'n on Civil Rights Rep. 147--151.

The course of subsequent Fifteenth Amendment litigation in this Court demonstrates the variety and persistence of these and similar institutions designed to deprive Negroes of the right to vote. Grandfather clauses were invalidated in Guinn v. United States, 238 U.S. 347, 35 S.Ct. 926, 59 L.Ed. 1340, and Myers v. Anderson, 238 U.S. 368, 35 S.Ct. 932, 59 L.Ed. 1349. Procedural hurdles were struck down in Lane v. Wilson, 307 U.S. 268, 59 S.Ct. 872, 83 L.Ed. 1281. The white primary was outlawed in Smith v. Allwright, 321 U.S. 649, 64 S.Ct. 757, 88 L.Ed. 987, and Terry v. Adams, 345 U.S. 461, 73 S.Ct. 809, 97 L.Ed. 1152. Improper challenges were nullified in United States v. Thomas, 362 U.S. 58, 80 S.Ct. 612, 4 L.Ed.2d 535. Racial gerrymandering was forbidden by Gomillion v. Lightfoot, 364 U.S. 339, 81 S.Ct. 125, 5 L.Ed.2d 110. Finally, discriminatory application of voting tests was condemned in Schnell v. Davis, 336 U.S. 933, 69 S.Ct. 749, 93 L.Ed. 1093; *312Alabama v. United States, 371 U.S. 37, 83 S.Ct. 145, 9 L.Ed.2d 112, and Louisiana v. United States, 380 U.S. 145, 85 S.Ct. 817, 13 L.Ed.2d 709.

According to the evidence in recent Justice Department voting suits, the latter stratagem is now the principal method used to bar Negroes from the polls. Discriminatory administration of voting qualifications has been found in all eight Alabama cases, in all nine Louisiana cases, and in all nine Mississippi cases which have gone to final judgment. [FN11] Moreover, in almost all of these cases, the courts have held that the discrimination was pursuant to a widespread 'pattern or practice.' White applicants for registration have often been excused altogether from the literacy and understanding tests or have been given easy versions, have received extensive help from voting officials, and have been registered despite serious errors in their answers. [FN12] Negroes, on the other hand, have typically been required to pass difficult versions of all the tests, without any outside assistance and without the slightest error. [FN13] The good-morals requirement *313 is so vague and subjective that it has constituted an open invitation to abuse at the hands of voting officials. [FN14] Negroes obliged to obtain vouchers from registered voters have found it virtually impossible to comply in areas where almost no Negroes are on the rolls. [FN15]

FN11. For example, see three voting suits brought against the States themselves: United States v. State of Alabama, D.C., 192 F.Supp. 677, aff'd, 5 Cir., 304 F.2d 583, aff'd, 371 U.S. 37, 83 S.Ct. 145, 9 L.Ed.2d 112; United States v. State of Louisiana, D.C., 225 F.Supp. 353, aff'd, 380 U.S. 145, 85 S.Ct. 817, 13 L.Ed.2d 709; United States v. State of Mississippi, 5 Cir., 339 F.2d 679.

FN12. A white applicant in Louisiana satisfied the registrar of his ability to interpret the state constitution by writing, 'FRDUM FOOF SPETGH.' United States v. State of Louisiana, D.C., 225 F.Supp. 353, 384. A white applicant in Alabama who had never completed the first grade of school was enrolled after the registrar filled out the entire form for him. United States v. Penton, D.C., 212 F.Supp. 193, 210--211.

FN13. In Panola County, Mississippi, the registrar required Negroes to interpret the provision of the state constitution concerning 'the rate of interest on the fund known as the 'Chickasaw School Fund." United States v. Duke, 5 Cir., 332 F.2d 759, 764. In Forrest County, Mississippi, the registrar rejected six Negroes with baccalaureate degrees, three of whom were also Masters of Arts. United States v. Lynd, 5 Cir., 301 F.2d 818, 821.

FN14. For example, see United States v. Atkins, 5 Cir., 323 F.2d 733, 743.

FN15. For example, see United States v. Logue, 5 Cir., 344 F.2d 290, 292.

In recent years, Congress has repeatedly tried to cope with the problem by facilitating case-by-case litigation against voting discrimination. The Civil **811 Rights Act of 1957 [FN16] authorized the Attorney General to seek injunctions against public and private interference with the right to vote on racial grounds. Perfecting amendments in the Civil Rights Act of 1960 [FN17] permitted the joinder of States as parties defendant, gave the Attorney General access to local voting records, and authorized courts to register voters in areas of systematic discrimination. Title I of the Civil Rights Act of 1964 [FN18] expedited the hearing of voting cases before three-judge courts and outlawed some of the tactics used to disqualify Negroes from voting in federal elections.

FN16. 71 Stat. 634.

FN17. 74 Stat. 86.

FN18. 78 Stat. 241, 42 U.S.C. s 1971 (1964 ed.).

Despite the earnest efforts of the Justice Department and of many federal judges, these new laws have done little to cure the problem of voting discrimination. According to estimates by the Attorney General during hearings on the Act, registration of voting-age Negroes in Alabama rose only from 14.2% to 19.4% between 1958 and 1964; in Louisiana it barely inched ahead from 31.7% to 31.8% between 1956 and 1965; and in Mississippi it increased only from 4.4% to 6.4% between 1954 and 1964. In each instance, registration of voting-age whites ran roughly 50 percentage points or more ahead of Negro registration.

*314 The previous legislation has proved ineffective for a number of reasons. Voting suits are unusually onerous to prepare, sometimes requiring as many as 6,000 man-hours spent combing through registration records in preparation for trial. Litigation has been exceedingly slow, in part because of the ample opportunities for delay afforded voting officials and others involved in the proceedings. Even when favorable decisions have finally been obtained, some of the States affected have merely switched to discriminatory devices not covered by the federal decrees or have enacted difficult new tests designed to prolong the existing disparity between white and Negro registration. [FN19] Alternatively, certain local officials have defied and evaded court orders or have simply closed their registration offices to freeze the voting rolls. [FN20] The provision of the 1960 law authorizing registration by federal officers has had little impact on local maladministration because of its procedural complexities.

FN19. The Court of Appeals for the Fifth Circuit ordered the registrars of Forrect County, Mississippi, to give future Negro applicants the same assistance which white applicants had enjoyed in the past, and to register future Negro applicants despite errors which were not serious enough to disqualify white applicants in the past. The Mississippi Legislature promptly responded by requiring applicants to complete their

registration forms without assistance or error, and by adding a good-morals and public-challenge provision to the registration laws. United States v. State of Mississippi, D.C., 229 F.Supp. 925, 996--997 (dissenting opinion).

FN20. For example, see United States v. Parker, D.C., 236 F.Supp. 511; United States v. Palmer, D.C., 230 F.Supp. 716.

During the hearings and debates on the Act, Selma, Alabama, was repeatedly referred to as the pre-eminent example of the ineffectiveness of existing legislation. In Dallas County, of which Selma is the seat, there were four years of litigation by the Justice Department and two findings by the federal courts of widespread voting discrimination. Yet in those four years, Negro registration ***315** rose only from 156 to 383, although there are approximately 15,000 Negroes of voting age in the county. Any possibility that these figures were attributable to political apathy was dispelled by the protest demonstrations in Selma in the early months of 1965. The House Committee on the Judiciary summed up the reaction of Congress to these developments in the following words:

'The litigation in Dallas County took more than 4 years to open ****812** the door to the exercise of constitutional rights conferred almost a century ago. The problem on a national scale is that the difficulties experienced in suits in Dallas County have been encountered over and over again under existing voting laws. Four years is too long. The burden is too heavy--the wrong to our citizens is too serious--the damage to our national conscience is too great not to adopt more effective measures than exist today.

'Such is the essential justification for the pending bill.' House Report 11.

II.

The Voting Rights Act of 1965 reflects Congress' firm intention to rid the country of racial discrimination in voting. [FN21] The heart of the Act is a complex scheme of stringent remedies aimed at areas where voting discrimination has been most flagrant. Section 4(a)--(d) lays down a formula defining the States and political subdivisions to which these new remedies apply. The first of the remedies, contained in s 4(a), is the suspension of literacy tests and similar voting qualifications for a period of five years from the last occurrence of substantial voting discrimination. Section 5 prescribes a second ***316** remedy, the suspension of all new voting regulations pending review by federal authorities to determine whether their use would perpetuate voting discrimination. The third remedy, covered in ss 6(b), 7, 9, and 13(a), is the assignment of federal examiners on certification by the Attorney General to list qualified applicants who are thereafter entitled to vote in all elections.

FN21. For convenient reference, the entire Act is reprinted in an Appendix to this opinion.

Other provisions of the Act prescribe subsidiary cures for persistent voting discrimination. Section 8 authorizes the appointment of federal poll-watchers in places to which federal examiners have already been assigned. Section 10(d) excuses those made eligible to vote in sections of the country covered by s 4(b) of the Act from paying accumulated past poll taxes for state and local elections. Section 12(e) provides for balloting by persons denied access to the polls in areas where federal examiners have been appointed.

The remaining remedial portions of the Act are aimed at voting discrimination in any area of the country where it may occur. Section 2 broadly prohibits the use of voting rules to abridge exercise of the franchise on racial grounds. Sections 3, 6(a), and 13(b) strengthen existing procedures for attacking voting discrimination by means of litigation. Section 4(e) excuses citizens educated in American schools conducted in a foreign language from passing English-language literacy tests. Section 10(a)--(c) facilitates constitutional litigation challenging the

imposition of all poll taxes for state and local elections. Sections 11 and 12(a)--(d) authorize civil and criminal sanctions against interference with the exercise of rights guaranteed by the Act.

[5] At the outset, we emphasize that only some of the many portions of the Act are properly before us. South Carolina has not challenged ss 2, 3, 4(e), 6(a), 8, 10, 12(d) and (e), 13(b), and other miscellaneous provisions having nothing to do with this lawsuit. Judicial review of these sections must await subsequent litigation.*317 [FN22] In addition, **813 we find that South Carolina's attack on ss 11 and 12(a)--(c) is premature. No person has yet been subjected to, or even threatened with, the criminal sanctions which these sections of the Act authorize. See United States v. Raines, 362 U.S. 17, 20--24, 80 S.Ct. 519, 522--524, 4 L.Ed.2d 524. Consequently, the only sections of the Act to be reviewed at this time are ss 4(a)--(d), 5, 6(b), 7, 9, 13(a), and certain procedural portions of s 14, all of which are presently in actual operation in South Carolina. We turn now to a detailed description of these provisions and their present status.

> FN22. Section 4(e) has been challenged in Morgan v. Katzenbach, D.C., 247 F.Supp. 196, prob. juris. noted, 382 U.S. 1007, 86 S.Ct. 621, and in United States v. County Bd. of Elections, D.C., 248 F.Supp. 316. Section 10(a)--(c) is involved in United States v. Texas, D.C., 252 F.Supp. 234 and in United States v. Alabama, D.C., 252 F.Supp. 95; see also Harper v. Virginia State Bd. of Elections, 382 U.S. 951, 86 S.Ct. 425, and Butts v. Harrison, 382 U.S. 806, 86 S.Ct. 94, 15 L.Ed.2d 57, which were argued together before this Court on January 25 and 26, 1966.

Coverage formula.

The remedial sections of the Act assailed by South Carolina automatically apply to any State, or to any separate political subdivision such as a county or parish, for which two findings have been made: (1) the Attorney General has determined that on November 1, 1964, it maintained a 'test or device,' and (2) the Director of the Census has determined that less than 50% of its votingage residents were registered on November 1, 1964, or voted in the presidential election of November 1964. These findings are not reviewable in any court and are final upon publication in the Federal Register. s 4(b). As used throughout the Act, the phrase 'test or device' means any requirement that a registrant or voter must '(1) demonstrate the ability to read, write, understand, or interpret any matter, (2) demonstrate any educational achievement or his knowledge of any particular subject, (3) possess good moral character, or (4) prove his qualifications *318 by the voucher of registered voters or members of any other class.' s 4(c).

Statutory coverage of a State or political subdivision under s 4(b) is terminated if the area obtains a declaratory judgment from the District Court for the District of Columbia, determining that tests and devices have not been used during the preceding five years to abridge the franchise on racial grounds. The Attorney General shall consent to entry of the judgment if he has no reason to believe that the facts are otherwise. s 4(a). For the purposes of this section, tests and devices are not deemed to have been used in a forbidden manner if the incidents of discrimination are few in number and have been promptly corrected, if their continuing effects have been abated, and if they are unlikely to recur in the future. s 4(d). On the other hand, no area may obtain a declaratory judgment for five years after the final decision of a federal court (other than the denial of a judgment under this section of the Act), determining that discrimination through the use of tests or devices has occurred anywhere in the State or political subdivision. These declaratory judgment actions are to be heard by a three-judge panel, with direct appeal to this Court. s 4(a).

South Carolina was brought within the coverage formula of the Act on August 7, 1965, pursuant to appropriate administrative determinations which have not been challenged in this proceeding. [FN23] On the same day, coverage was also extended to Alabama, Alaska, Georgia, Louisiana, Mississippi, Virginia, 26 counties in North Carolina, and one county in Arizona. [FN24] Two more counties in Arizona, one county in Hawaii, and one county in Idaho were added to the list on November 19, 1965. [FN25] ***319** Thus far Alaska, the three Arizona counties, and the single county in Idaho have asked the District Court for the District of Columbia to grant a declaratory judgment terminating statutory coverage. [FN26]

FN23. 30 Fed.Reg. 9897.

FN24. Ibid.

FN25. 30 Fed.Reg. 14505.

FN26. Alaska v. United States, Civ.Act. 101--66; Apache County v. United States, Civ.Act. 292--66; Elmore County v. United States, Civ.Act. 320--66.

****814** Suspension of tests.

In a State or political subdivision covered by s 4(b) of the Act, no person may be denied the right to vote in any election because of his failure to comply with a 'test or device.' s 4(a).

On account of this provision, South Carolina is temporarily barred from enforcing the portion of its voting laws which requires every applicant for registration to show that he:

'Can both read and write any section of (the State) Constitution submitted to (him) by the registration officer or can show that he owns, and has paid all taxes collectible during the previous year on, property in this State assessed at three hundred dollars or more.' S.C.Code Ann. s 23--62(4) (1965 Supp.).

The Attorney General has determined that the property qualification is inseparable from the literacy test, [FN27] and South Carolina makes no objection to this finding. Similar tests and devices have been temporarily suspended in the other sections of the country listed above. [FN28]

FN27. 30 Fed.Reg. 14045--14046.

FN28. For a chart of the tests and devices in effect at the time the Act was under consideration, see House Hearings 30--32; Senate Report 42--43.

Review of new rules.

In a State or political subdivision covered by s 4(b) of the Act, no person may be denied the right to vote in any election because of his failure to comply with a voting qualification or procedure different from those in force on ***320** November 1, 1964. This suspension of new rules is terminated, however, under either of the following circumstances: (1) if the area has submitted the rules to the Attorney General, and he has not interposed an objection within 60 days, or (2) if the area has obtained a declaratory judgment from the District Court for the District of Columbia, determining that the rules will not abridge the franchise on racial grounds. These declaratory judgment actions are to be heard by a three-judge panel, with direct appeal to this Court. s 5.

South Carolina altered its voting laws in 1965 to extend the closing hour at polling places from 6 p.m. to 7 p.m. [FN29] The State has not sought judicial review of this change in the District Court for the District of Columbia, nor has it submitted the new rule to the Attorney General for this scrutiny, although at our hearing the Attorney General announced that he does not challenge the amendment. There are indications in the record that other sections of the country listed above have also altered their voting laws since November 1, 1964. [FN30]

FN29. S.C.Code Ann. s 23--342 (1965

Supp.).

FN30. Brief for Mississippi as amicus curiae, App.

Federal examiners.

In any political subdivision covered by s 4(b) of the Act, the Civil Service Commission shall appoint voting examiners whenever the Attorney General certifies either of the following facts: (1) that he has received meritorious written complaints from at least 20 residents alleging that they have been disenfranchised under color of law because of their race, or (2) that the appointment of examiners is otherwise necessary to effectuate the guarantees of the Fifteenth Amendment. In making the latter determination, the Attorney General must consider, among other factors, whether the registration ratio of non-whites to whites seems reasonably attributable to ***321** racial discrimination, or whether there is substantial evidence of good-faith efforts to comply with the Fifteenth Amendment. s 6(b). These certifications are not reviewable in any court and are effective upon publication in the Federal Register. s 4(b).

The examiners who have been appointed are to test the voting qualifications ****815** of applicants according to regulations of the Civil Service Commission prescribing times, places, procedures, and forms. ss 7(a) and 9(b). Any person who meets the voting requirements of state law, insofar as these have not been suspended by the Act, must promptly be placed on a list of eligible voters. Examiners are to transmit their lists at least once a month to the appropriate state or local officials, who in turn are required to place the listed names on the official voting rolls. Any person listed by an examiner is entitled to vote in all elections held more than 45 days after his name has been transmitted. s 7(b).

A person shall be removed from the voting list by an examiner if he has lost his eligibility under valid state law, or if he has been successfully challenged through the procedure prescribed in s 9(a) of the Act. s 7(d). The challenge must be filed at the office within the State designated by the Civil Service Commission; must be submitted within 10 days after the listing is made available for public inspection; must be supported by the affidavits of at least two people having personal knowledge of the relevant facts; and must be served on the person challenged by mail or at his residence. A hearing officer appointed by the Civil Service Commission shall hear the challenge and render a decision within 15 days after the challenge is filed. A petition for review of the hearing officer's decision must be submitted within an additional 15 days after service of the decision on the person seeking review. The court of appeals for the circuit in which the person challenged resides is to ***322** hear the petition and affirm the hearing officer's decision unless it is clearly erroneous. Any person listed by an examiner is entitled to vote pending a final decision of the hearing officer or the court. s 9(a).

The listing procedures in a political subdivision are terminated under either of the following circumstances: (1) if the Attorney General informs the Civil Service Commission that all persons listed by examiners have been placed on the official voting rolls, and that there is no longer reasonable cause to fear abridgement of the franchise on racial grounds, or (2) if the political subdivision has obtained a declaratory judgment from the District Court for the District of Columbia, ascertaining the same facts which govern termination by the Attorney General, and the Director of the Census has determined that more than 50% of the non-white residents of voting age are registered to vote. A political subdivision may petition the Attorney General to terminate listing procedures or to authorize the necessary census, and the District Court itself shall request the census if the Attorney General's refusal to do so is arbitrary or unreasonable. s 13(a). The determinations by the Director of the Census are not reviewable in any court and are final upon publication in the Federal Register.

s 4(b).

On October 30, 1965, the Attorney General certified the need for federal examiners in two South Carolina counties, [FN31] and examiners appointed by the Civil Service Commission have been serving there since November 8, 1965. Examiners have also been assigned to 11 counties in Alabama, five parishes in Louisiana, and 19 counties in Mississippi. [FN32] The examiners are listing people found eligible to vote, and the challenge procedure has been ***323** employed extensively. [FN33] No political subdivision has yet sought to have federal examiners withdrawn through the Attorney General or the ****816** District Court for the District of Columbia.

FN31. 30 Fed.Reg. 13850.

FN32. 30 Fed.Reg. 9970--9971, 10863, 12363, 12654, 13849--13850, 15837; 31 Fed.Reg. 914.

FN33. See Comm'n on Civil Rights, The Voting Rights Act (1965).

III.

These provisions of the Voting Rights Act of 1965 are challenged on the fundamental ground that they exceed the powers of Congress and encroach on an area reserved to the States by the Constitution. South Carolina and certain of the amici curiae also attack specific sections of the Act for more particular reasons. They argue that the coverage formula prescribed in s 4(a)--(d) violates the principle of the equality of States, denies due process by employing an invalid presumption and by barring judicial review of administrative findings, constitutes a forbidden bill of attainder, and impairs the separation of powers by adjudicating guilt through legislation. They claim that the review of new voting rules required in s 5 infringes Article III by directing the District Court to issue advisory opinions. They contend that the assignment of federal examiners authorized in s 6(b) abridges due process by precluding judicial review of administrative findings and impairs the separation of powers by giving the Attorney General judicial functions; also that the challenge procedure prescribed in s 9 denies due process on account of its speed. Finally, South Carolina and certain of the amici curiae maintain that ss 4(a) and 5, buttressed by s 14(b) of the Act, abridge due process by limiting litigation to a distant forum.

[6][7][8][9][10] Some of these contentions may be dismissed at the outset. The word 'person' in the context of the Due Process Clause of the Fifth Amendment cannot, by any reasonable mode of interpretation, be expanded to encompass the States of the Union, and to our knowledge ***324** this has never been done by any court. See International Shoe Co. v. Coreham, 246 La. 244, 266, 164 So.2d 314, 322, n. 5, cf. United States v. City of Jackson, 318 F.2d 1, 8 (C.A.5th Cir.). Likewise, courts have consistently regarded the Bill of Attainder Clause of Article I and the principle of the separation of powers only as protections for individual persons and private groups, those who are peculiarly vulnerable to non-judicial determinations of guilt. See United States v. Brown, 381 U.S. 437, 85 S.Ct. 1707, 14 L.Ed.2d 484; Ex parte Garland, 4 Wall. 333, 18 L.Ed. 366. Nor does a State have standing as the parent of its citizens to invoke these constitutional provisions against the Federal Government, the ultimate parens patriae of every American citizen. Com. of Massachusetts v. Mellon, 262 U.S. 447, 485--486, 43 S.Ct. 597, 600--601, 67 L.Ed. 1078; State of Florida v. Mellon, 273 U.S. 12, 18, 47 S.Ct. 265, 267, 71 L.Ed. 511. The objections to the Act which are raised under these provisions may therefore be considered only as additional aspects of the basic question presented by the case: Has Congress exercised its powers under the Fifteenth Amendment in an appropriate manner with relation to the States?

[11] The ground rules for resolving this question are clear. The language and purpose of the Fifteenth Amendment, the prior decisions construing its several provisions, and the general doctrines of constitutional

interpretation, all point to one fundamental principle. As against the reserved powers of the States, Congress may use any rational means to effectuate the constitutional prohibition of racial discrimination in voting. Cf. our rulings last Term, sustaining Title II of the Civil Rights Act of 1964, in Heart of Atlanta Motel v. United States, 379 U.S. 241, 258--259, 261--262, 85 S.Ct. 348, 358-- 359, 360, 13 L.Ed.2d 258, and Katzenbach v. McClung, 379 U.S. 294, 303--304, 85 S.Ct. 377, 383--384, 13 L.Ed.2d 290. We turn now to a more detailed description of the standards which govern our review of the Act.

*325 [12][13][14][15] Section 1 of the Fifteenth Amendment declares that '(t)he right of citizens of the United States to vote shall not be denied or abridged by the United **817 States or by any State on account of race, color, or previous condition of servitude.' This declaration has always been treated as self-executing and has repeatedly been construed, without further legislative specification, to invalidate state voting qualifications or procedures which are discriminatory on their face or in practice. See Neal v. Delaware, 103 U.S. 370, 26 L.Ed. 567; Guinn v. United States, 238 U.S. 347, 35 S.Ct. 926, 59 L.Ed. 1340; Myers v. Anderson, 238 U.S. 368, 35 S.Ct. 932, 59 L.Ed. 1349; Lane v. Wilson, 307 U.S. 268, 59 S.Ct. 872, 83 L.Ed. 1281; Smith v. Allwright, 321 U.S. 649, 64 S.Ct. 757, 88 L.Ed. 987; Schnell v. Davis, 336 U.S. 933, 69 S.Ct. 749, 93 L.Ed. 1093; Terry v. Adams, 345 U.S. 461, 73 S.Ct. 809, 97 L.Ed. 1152; United States v. Thomas, 362 U.S. 58, 80 S.Ct. 612, 4 L.Ed.2d 535; Gomillion v. Lightfoot, 364 U.S. 339, 81 S.Ct. 125, 5 L.Ed.2d 110; Alabama v. United States, 371 U.S. 37, 83 S.Ct. 145, 9 L.Ed.2d 112; Louisiana v. United States, 380 U.S. 145, 85 S.Ct. 817, 13 L.Ed.2d 709. These decisions have been rendered with full respect for the general rule, reiterated last Term in Carrington v. Rash, 380 U.S. 89, 91, 85 S.Ct. 775, 777, 13 L.Ed.2d 675, that States 'have broad powers to determine the conditions under which the right of suffrage may be exercised.' The gist of the matter is that the Fifteenth Amendment supersedes contrary exertions of state power. 'When a State exercises power wholly within the domain of state interest, it is insulated from federal judicial review. But such insulation is not carried over when state power is used as an instrument for circumventing a federally protected right.' Gomillion v. Lightfoot, 364 U.S., at 347, 81 S.Ct., at 130.

[16][17][18] South Carolina contends that the cases cited above are precedents only for the authority of the judiciary to strike down state statutes and procedures--that to allow an exercise of this authority by Congress would be to rob the courts of their rightful constitutional role. On the contrary, s 2 of the Fifteenth Amendment expressly declares that 'Congress shall have power to enforce this article by appropriate legislation.' By adding this *326 authorization, the Framers indicated that Congress was to be chiefly responsible for implementing the rights created in s 1. 'It is the power of Congress which has been enlarged. Congress is authorized to enforce the prohibitions by appropriate legislation Some legislation is contemplated to make the (Civil War) amendments fully effective.' Ex parte Virginia, 100 U.S. 339, 345, 25 L.Ed. 676. Accordingly, in addition to the courts, Congress has full remedial powers to effectuate the constitutional prohibition against racial discrimination in voting.

Congress has repeatedly exercised these powers in the past, and its enactments have repeatedly been upheld. For recent examples, see the Civil Rights Act of 1957, which was sustained in United States v. Raines, 362 U.S. 17, 80 S.Ct. 519, 4 L.Ed.2d 524; United States v. Thomas, supra; and Hannah v. Larche, 363 U.S. 420, 80 S.Ct. 1502, 4 L.Ed.2d 1307; and the Civil Rights Act of 1960, which was upheld in Alabama v. United States, supra; Louisiana v. United States, supra; and United States v. Mississippi, 380 U.S. 128, 85 S.Ct. 808, 13 L.Ed.2d 717. On the rare occasions when the Court has found an unconstitutional exercise of these powers, in its opinion Congress had attacked evils not comprehended by the Fifteenth Amendment. See

United States v. Reese, 92 U.S. 214, 23 L.Ed. 563; James v. Bowman, 190 U.S. 127, 23 S.Ct. 678, 47 L.Ed. 979.

[19][20] The basic test to be applied in a case involving s 2 of the Fifteenth Amendment is the same as in all cases concerning the express powers of Congress with relation to the reserved powers of the States. Chief Justice Marshall laid down the classic formulation, 50 **818 years before the Fifteenth Amendment was ratified:

'Let the end be legitimate, let it be within the scope of the constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the constitution, are constitutional.' McCulloch v. Maryland, 4 Wheat. 316, 421, 4 L.Ed. 579.

*327 The Court has subsequently echoed his language in describing each of the Civil War Amendments:

'Whatever legislation is appropriate, that is, adapted to carry out the objects the amendments have in view, whatever tends to enforce submission to the prohibitions they contain, and to secure to all persons the enjoyment of perfect equality of civil rights and the equal protection of the laws against State denial or invasion, if not prohibited, is brought within the domain of congressional power.' Ex parte Virginia, 100 U.S., at 345--346, 25 L.Ed. 676.

This language was again employed, nearly 50 years later, with reference to Congress' related authority under s 2 of the Eighteenth Amendment. James Everard's Breweries v. Day, 265 U.S. 545, 558--559, 44 S.Ct. 628, 631, 68 L.Ed. 1174.

[21] We therefore reject South Carolina's argument that Congress may appropriately do no more than to forbid violations of the Fifteenth Amendment in general terms--that the task of fashioning specific remedies or of applying them to particular localities must necessarily be left entirely to the courts. Congress is not circumscribed by any such artificial rules under s 2 of the Fifteenth Amendment. In the oft-repeated words of Chief Justice Marshall, referring to another specific legislative authorization in the Constitution, 'This power, like all others vested in Congress, is complete in itself, may be exercised to its utmost extent, and acknowledges no limitations, other than are prescribed in the constitution.' Gibbons v. Ogden, 9 Wheat. 1, 196, 6 L.Ed. 23.

IV.

[22] Congress exercised its authority under the Fifteenth Amendment in an inventive manner when it enacted the Voting Rights Act of 1965. First: The measure prescribes remedies for voting discrimination which go into *328 effect without any need for prior adjudication. This was clearly a legitimate response to the problem, for which there is ample precedent under other constitutional provisions. See Katzenbach v. McClung, 379 U.S. 294, 302--304, 85 S.Ct. 377, 383--384, 13 L.Ed.2d 290; United States v. Darby, 312 U.S. 100, 120--121, 61 S.Ct. 451, 460, 85 L.Ed. 609. Congress had found that case-by-case litigation was inadequate to combat widespread and persistent discrimination in voting, because of the inordinate amount of time and energy required to overcome the obstructionist tactics invariably encountered in these lawsuits. [FN34] After enduring nearly a century of systematic resistance to the Fifteenth Amendment, Congress might well decide to shift the advantage of time and inertia from the perpetrators of the evil to its victims. The question remains, of course, whether the specific remedies prescribed in the Act were an appropriate means of combatting the evil, and to this question we shall presently address ourselves.

FN34. House Report 9--11; Senate Report 6--9.

[23][24] Second: The Act intentionally confines these remedies to a small number of States and political subdivisions which in most instances were familiar to Congress by name. [FN35] This, too, was a permissible method of dealing with the problem.

Congress had learned that substantial voting discrimination ****819** presently occurs in certain sections of the country, and it knew no way of accurately forecasting whether the evil might spread elsewhere in the future. [FN36] In acceptable legislative fashion, Congress chose to limit its attention to the geographic areas where immediate action seemed necessary. See McGowan v. State of Maryland, 366 U.S. 420,427, 81 S.Ct. 1101, 1105, 6 L.Ed.2d 393; Salsburg v. State of Maryland, 346 U.S. 545, 550--554, 74 S.Ct. 280, 282--285, 98 L.Ed.2d 281. The doctrine of the equality of States, invoked by South Carolina, does not bar this approach, for that doctrine applies only to the terms ***329** upon which States are admitted to the Union, and not to the remedies for local evils which have subsequently appeared. See Coyle v. Smith, 221 U.S. 559, 31 S.Ct. 688, 55 L.Ed. 853, and cases cited therein.

FN35. House Report 13; Senate Report 52, 55.

FN36. House Hearings 27; Senate Hearings 201.

Coverage formula.

[25] We now consider the related question of whether the specific States and political subdivisions within s 4(b) of the Act were an appropriate target for the new remedies. South Carolina contends that the coverage formula is awkwardly designed in a number of respects and that it disregards various local conditions which have nothing to do with racial discrimination. These arguments, however, are largely beside the point. [FN37] Congress began work with reliable evidence of actual voting discrimination in a great majority of the States and political subdivisions affected by the new remedies of the Act. The formula eventually evolved to describe these areas was relevant to the problem of voting discrimination, and Congress was therefore entitled to infer a significant danger of the evil in the few remaining States and political subdivisions covered by s 4(b) of the Act. No more was required to justify the application to these areas of Congress' express powers under the Fifteenth Amendment. Cf. North American Co. v. S.E.C., 327 U.S. 686, 710--711, 66 S.Ct. 785, 798--799, 90 L.Ed. 945; Assigned Car Cases, 274 U.S. 564, 582-- 583, 47 S.Ct. 727, 733, 71 L.Ed. 1204.

FN37. For Congress' defense of the formula, see House Report 13-- 14; Senate Report 13--14.

[26] To be specific, the new remedies of the Act are imposed on three States--Alabama, Louisiana, and Mississippi--in which federal courts have repeatedly found substantial voting discrimination. [FN38] Section 4(b) of the Act also embraces two other States--Georgia and South Carolina--plus large portions of a third State--North Carolina--for which there was more fragmentary evidence of ***330** recent voting discrimination mainly adduced by the Justice Department and the Civil Rights Commission. [FN39] All of these areas were appropriately subjected to the new remedies. In identifying past evils, Congress obviously may avail itself of information from any probative source. See Heart of Atlanta Motel v. United States, 379 U.S. 241, 252--253, 85 S.Ct. 348, 354--355, 13 L.Ed.2d 258; Katzenbach v. McClung, 379 U.S., at 299--301, 85 S.Ct. at 381--382, 13 L.Ed.2d 290.

FN38. House Report 12; Senate Report 9--10.

FN39. Georgia: House Hearings 160--176; Senate Hearings 1182--1184, 1237, 1253, 1300--1301, 1336--1345. North Carolina: Senate Hearings 27-- 28, 39, 246--248. South Carolina: House Hearings 114--116, 196--201; Senate Hearings 1353--1354.

[27][28] The areas listed above, for which there was evidence of actual voting discrimination, share two

characteristics incorporated by Congress into the coverage formula: the use of tests and devices for voter registration, and a voting rate in the 1964 presidential election at least 12 points below the national average. Tests and devices are relevant to voting discrimination because of their long history as a tool for perpetrating the evil; a low voting rate is pertinent for the obvious **820 reason that widespread disenfranchisement must inevitably affect the number of actual voters. Accordingly, the coverage formula is rational in both practice and theory. It was therefore permissible to impose the new remedies on the few remaining States and political subdivisions covered by the formula, at least in the absence of proof that they have been free of substantial voting discrimination in recent years. Congress is clearly not bound by the rules relating to statutory presumptions in criminal cases when it prescribes civil remedies against other organs of government under s 2 of the Fifteenth Amendment. Compare United States v. Romano, 382 U.S. 136, 86 S.Ct. 279, 15 L.Ed.2d 210; Tot v. United States, 319 U.S. 463, 63 S.Ct. 1241, 87 L.Ed. 1519.

[29][30][31] It is irrelevant that the coverage formula excludes certain localities which do not employ voting tests and *331 devices but for which there is evidence of voting discrimination by other means. Congress had learned that widespread and persistent discrimination in voting during recent years has typically entailed the misuse of tests and devices, and this was the evil for which the new remedies were specifically designed. [FN40] At the same time, through ss 3, 6(a), and 13(b) of the Act, Congress strengthened existing remedies for voting discrimination in other areas of the country. Legislation need not deal with all phases of a problem in the same way, so long as the distinctions drawn have some basis in practical experience. See Williamson v. Lee Optical Co., 348 U.S. 483, 488--489, 75 S.Ct. 461, 464--465, 99 L.Ed. 563; Railway Express Agency v. People of State of New York, 336 U.S. 106, 69 S.Ct. 463, 93 L.Ed. 533. There are no States or political subdivisions exempted from coverage under s 4(b) in which the record reveals recent racial discrimination involving tests and devices. This fact confirms the rationality of the formula.

FN40. House Hearings 75--77; Senate Hearings 241--243.

[32] Acknowledging the possibility of overbreadth, the Act provides for termination of special statutory coverage at the behest of States and political subdivisions in which the danger of substantial voting discrimination has not materialized during the preceding five years. Despite South Carolina's argument to the contrary, Congress might appropriately limit litigation under this provision to a single court in the District of Columbia, pursuant to its constitutional power under Art. III, s 1, to 'ordain and establish' inferior federal tribunals. See Bowles v. Willingham, 321 U.S. 503, 510--512, 64 S.Ct. 641, 645, 646, 88 L.Ed. 892; Yakus v. United States, 321 U.S. 414, 427--431, 64 S.Ct. 660, 668, 670, 88 L.Ed. 834; Lockerty v. Phillips, 319 U.S. 182, 63 S.Ct. 1019, 87 L.Ed. 1339. At the present time, contractual claims against the United States for more than $10,000 must be brought in the Court of Claims, and, until 1962, the District of Columbia was the sole venue of suits against *332 federal officers officially residing in the Nation's Capital. [FN41] We have discovered no suggestion that Congress exceeded constitutional bounds in imposing these limitations on litigation against the Federal Government, and the Act is no less reasonable in this respect.

FN41. Regarding claims against the United States, see 28 U.S.C. ss 1491, 1346(a) (1964 ed.). Concerning suits against federal officers, see Stroud v. Benson, 4 Cir., 254 F.2d 448; H.R.Rep. No. 536, 87th Cong., 1st Sess.; S.Rep. No. 1992, 87th Cong., 2d Sess.; 28 U.S.C. s 1391(e) (1964 ed.); 2 Moore, Federal Practice 4.29 (1964 ed.).

[33] South Carolina contends that these termination procedures are a nullity because they impose an impossible burden of proof upon States and political subdivisions entitled to relief. As the Attorney General pointed out during hearings on the Act, however, an area need do no more than submit affidavits from voting officials, asserting that ****821** they have not been guilty of racial discrimination through the use of tests and devices during the past five years, and then refute whatever evidence to the contrary may be adduced by the Federal Government. [FN42] Section 4(d) further assures that an area need not disprove each isolated instance of voting discrimination in order to obtain relief in the termination proceedings. The burden of proof is therefore quite bearable, particularly since the relevant facts relating to the conduct of voting officials are peculiarly within the knowledge of the States and political subdivisions themselves. See United States v. New York, N.H. & R.R. Co., 355 U.S. 253, 256, n. 5, 78 S.Ct. 212, 214, 2 L.Ed.2d 247; cf. S.E.C. v. Ralston Purina Co., 346 U.S. 119, 126, 73 S.Ct. 981, 985, 97 L.Ed. 1494.

FN42. House Hearings 92--93; Senate Hearings 26--27.

[34] The Act bars direct judicial review of the findings by the Attorney General and the Director of the Census which trigger application of the coverage formula. We reject the claim by Alabama as amicus curiae that this provision is invalid because it allows the new remedies of ***333** the Act to be imposed in an arbitrary way. The Court has already permitted Congress to withdraw judicial review of administrative determinations in numerous cases involving the statutory rights of private parties. For example, see United States v. California Eastern Line, 348 U.S. 351, 75 S.Ct. 419, 99 L.Ed. 383; Switchmen's Union v. National Mediation Bd., 320 U.S. 297, 64 S.Ct. 95, 88 L.Ed. 61. In this instance, the findings not subject to review consist of objective statistical determinations by the Census Bureau and a routine analysis of state statutes by the Justice Department. These functions are unlikely to arouse any plausible dispute, as South Carolina apparently concedes. In the event that the formula is improperly applied, the area affected can always go into court and obtain termination of coverage under s 4(b), provided of course that it has not been guilty of voting discrimination in recent years. This procedure serves as a partial substitute for direct judicial review.

Suspension of tests.

[35] We now arrive at consideration of the specific remedies prescribed by the Act for areas included within the coverage formula. South Carolina assails the temporary suspension of existing voting qualifications, reciting the rule laid down by Lassiter v. Northampton County Bd. of Elections, 360 U.S. 45, 79 S.Ct. 985, 3 L.Ed.2d 1072, that literacy tests and related devices are not in themselves contrary to the Fifteenth Amendment. In that very case, however, the Court went on to say, 'Of course a literacy test, fair on its face, may be employed to perpetuate that discrimination which the Fifteenth Amendment was designed to uproot.' Id., at 53, 79 S.Ct. at 991. The record shows that in most of the States covered by the Act, including South Carolina, various tests and devices have been instituted with the purpose of disenfranchising Negroes, have been framed in such a way as to facilitate this aim, and have been administered ***334** in a discriminatory fashion for many years. [FN43] Under these circumstances, the Fifteenth Amendment has clearly been violated. See Louisiana v. United States, 380 U.S. 145, 85 S.Ct. 817, 13 L.Ed.2d 709; State of Alabama v. United States, 371 U.S. 37, 83 S.Ct. 145, 9 L.Ed.2d 112; Schnell v. Davis, 336 U.S. 933, 69 S.Ct. 749, 93 L.Ed. 1093.

FN43. House Report 11--13; Senate Report 4--5, 9--12.

[36] The Act suspends literacy tests and similar devices for a period of five years from the last occurrence of substantial voting discrimination. This was a legitimate response to the problem, for which there is ample precedent in Fifteenth Amendment

cases. Ibid. Underlying the response was the feeling that **822 States and political subdivisions which had been allowing white illiterates to vote for years could not sincerely complain about 'dilution' of their electorates through the registration of Negro illiterates. [FN44] Congress knew that continuance of the tests and devices in use at the present time, no matter how fairly administered in the future, would freeze the effect of past discrimination in favor of unqualified white registrants. [FN45] Congress permissibly rejected the alternative of requiring a complete re-registration of all voters, believing that this would be too harsh on many whites who had enjoyed the franchise for their entire adult lives. [FN46]

FN44. House Report 15; Senate Report 15--16.

FN45. House Report 15; Senate Report 16.

FN46. House Hearings 17; Senate Hearings 22--23.

Review of new rules.

[37][38] The Act suspends new voting regulations pending scrutiny by federal authorities to determine whether their use would violate the Fifteenth Amendment. This may have been an uncommon exercise of congressional power, as South Carolina contends, but the Court has recognized that exceptional conditions can justify legislative measures not otherwise appropriate. See *335Home Bldg. & Loan Ass'n v. Blaisdell, 290 U.S. 398, 54 S.Ct. 231, 78 L.Ed. 413; Wilson v. New, 243 U.S. 332, 37 S.Ct. 298, 61 L.Ed. 755. Congress knew that some of the States covered by s 4(b) of the Act had resorted to the extraordinary stratagem of contriving new rules of various kinds for the sole purpose of perpetuating voting discrimination in the face of adverse federal court decrees. [FN47] Congress had reason to suppose that these States might try similar maneuvers in the future in order to evade the remedies for voting discrimination contained in the Act itself. Under the compulsion of these unique circumstances, Congress responded in a permissibly decisive manner.

FN47. House Report 10--11; Senate Report 8, 12.

[39] For reasons already stated, there was nothing inappropriate about limiting litigation under this provision to the District Court for the District of Columbia, and in putting the burden of proof on the areas seeking relief. Nor has Congress authorized the District Court to issue advisory opinions, in violation of the principles of Article III invoked by Georgia as amicus curiae. The Act automatically suspends the operation of voting regulations enacted after November 1, 1964, and furnishes mechanisms for enforcing the suspension. A State or political subdivision wishing to make use of a recent amendment to its voting laws therefore has a concrete and immediate 'controversy' with the Federal Government. Cf. Public Utilities Comm. v. United States, 355 U.S. 534, 536--539, 78 S.Ct. 446, 448--450, 2 L.Ed.2d 470; United States v. State of California, 332 U.S. 19, 24--25, 67 S.Ct. 1658, 1661, 91 L.Ed. 1889. An appropriate remedy is a judicial determination that continued suspension of the new rule is unnecessary to vindicate rights guaranteed by the Fifteenth Amendment.

Federal examiners.

[40] The Act authorizes the appointment of federal examiners to list qualified applicants who are thereafter *336 entitled to vote, subject to an expeditious challenge procedure. This was clearly an appropriate response to the problem, closely related to remedies authorized in prior cases. See Alabama v. United States, supra; United States v. Thomas, 362 U.S. 58, 80 S.Ct. 612, 4 L.Ed.2d 535. In many of the political subdivisions covered by s 4(b) of the Act, voting officials have persistently employed a variety of procedural tactics to deny Negroes the

franchise, often in direct defiance **823 or evasion of federal court decrees. [FN48] Congress realized that merely to suspend voting rules which have been misused or are subject to misuse might leave this localized evil undisturbed. As for the briskness of the challenge procedure, Congress knew that in some of the areas affected, challenges had been persistently employed to harass registered Negroes. It chose to forestall this abuse, at the same time providing alternative ways for removing persons listed through error or fraud. [FN49] In addition to the judicial challenge procedure, s 7(d) allows for the removal of names by the examiner himself, and s 11(c) makes it a crime to obtain a listing through fraud.

FN48. House Report 16; Senate Report 15.

FN49. Senate Hearings 200.

[41] In recognition of the fact that there were political subdivisions covered by s 4(b) of the Act in which the appointment of federal examiners might be unnecessary, Congress assigned the Attorney General the task of determining the localities to which examiners should be sent. [FN50] There is no warrant for the claim, asserted by Georgia as amicus curiae, that the Attorney General is free to use this power in an arbitrary fashion, without regard to the purposes of the Act. Section 6(b) sets adequate standards to guide the exercise of his discretion, by directing him to calculate the registration ratio of non-whites to whites, and to weigh evidence of good-faith *337 efforts to avoid possible voting discrimination. At the same time, the special termination procedures of s 13(a) provide indirect judicial review for the political subdivisions affected, assuring the withdrawal of federal examiners from areas where they are clearly not needed. Cf. Carlson v. Landon, 342 U.S. 524, 542--544, 72 S.Ct. 525, 535--536, 96 L.Ed. 547; Mulford v. Smith, 307 U.S. 38, 48--49, 59 S.Ct. 648, 652, 83 L.Ed. 1092.

FN50. House Report 16.

After enduring nearly a century of widespread resistance to the Fifteenth Amendment, Congress has marshalled an array of potent weapons against the evil, with authority in the Attorney General to employ them effectively. Many of the areas directly affected by this development have indicated their willingness to abide by any restraints legitimately imposed upon them. [FN51] We here hold that the portions of the Voting Rights Act properly before us are a valid means for carrying out the commands of the Fifteenth Amendment. Hopefully, millions of non-white Americans will now be able to participate for the first time on an equal basis in the government under which they live. We may finally look forward to the day when truly '(t)he right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.'

FN51. See Comm'n on Civil Rights, The Voting Rights Act (1965).

The bill of complaint is dismissed.

Bill dismissed.

APPENDIX TO OPINION OF THE COURT.
VOTING RIGHTS ACT OF 1965.
AN ACT

To enforce the fifteenth amendment to the Constitution of the United States, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress *338 assembled, That this Act shall be known as the 'Voting Rights Act of 1965.'

Sec. 2. No voting qualification or prerequisite to voting, or standard, practice, or procedure shall be imposed or applied by any State or political subdivision to deny or abridge the right of any citizen of the United States to vote on account of race or color.

****824** Sec. 3. (a) Whenever the Attorney General institutes a proceeding under any statute to enforce the guarantees of the fifteenth amendment in any State or political subdivision the court shall authorize the appointment of Federal examiners by the United States Civil Service Commission in accordance with section 6 to serve for such period of time and for such political subdivisions as the court shall determine is appropriate to enforce the guarantees of the fifteenth amendment (1) as part of any interlocutory order if the court determines that the appointment of such examiners is necessary to enforce such guarantees or (2) as part of any final judgment if the court finds that violations of the fifteenth amendment justifying equitable relief have occurred in such State or subdivision: Provided, That the court need not authorize the appointment of examiners if any incidents of denial or abridgement of the right to vote on account of race or color (1) have been few in number and have been promptly and effectively corrected by State or local action, (2) the continuing effect of such incidents has been eliminated, and (3) there is no reasonable probability of their recurrence in the future.

(b) If in a proceeding instituted by the Attorney General under any statute to enforce the guarantees of the fifteenth amendment in any State or political subdivision the court finds that a test or device has been used for the purpose or with the effect of denying or abridging the right of any citizen of the United States to vote on account of race or color, it shall suspend the use of ***339** tests and devices in such State or political subdivisions as the court shall determine is appropriate and for such period as it deems necessary.

(c) If in any proceeding instituted by the Attorney General under any statute to enforce the guarantees of the fifteenth amendment in any State or political subdivision the court finds that violations of the fifteenth amendment justifying equitable relief have occurred within the territory of such State or political subdivision, the court, in addition to such relief as it may grant, shall retain jurisdiction for such period as it may deem appropriate and during such period no voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect at the time the proceeding was commenced shall be enforced unless and until the court finds that such qualification, prerequisite, standard, practice, or procedure does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color: Provided, That such qualification, prerequisite, standard, practice, or procedure may be enforced if the qualification, prerequisite, standard, practice, or procedure has been submitted by the chief legal officer or other appropriate official of such State or subdivision to the Attorney General and the Attorney General has not interposed an objection within sixty days after such submission, except that neither the court's finding nor the Attorney General's failure to object shall bar a subsequent action to enjoin enforcement of such qualification, prerequisite, standard, practice, or procedure.

Sec. 4. (a) To assure that the right of citizens of the United States to vote is not denied or abridged on account of race or color, no citizen shall be denied the right to vote in any Federal, State, or local election because of his failure to comply with any test or device in any State with respect to which the determinations have been ***340** made under subsection (b) or in any political subdivision with respect to which such determinations have been made as a separate unit, unless the United States District Court for the District of Columbia in an action for a declaratory judgment brought by such State or subdivision against the United States has determined that no such test or device has been used during the five years preceding the filing of the ****825** action for the purpose or with the effect of denying or abridging the right to vote on account of race or color: Provided, That no such declaratory judgment shall issue with respect to any plaintiff for a period of five years after the entry of a final judgment of any court

of the United States, other than the denial of a declaratory judgment under this section, whether entered prior to or after the enactment of this Act, determining that denials or abridgments of the right to vote on account of race or color through the use of such tests or devices have occurred anywhere in the territory of such plaintiff.

An action pursuant to this subsection shall be heard and determined by a court of three judges in accordance with the provisions of section 2284 of title 28 of the United States Code and any appeal shall lie to the Supreme Court. The court shall retain jurisdiction of any action pursuant to this subsection for five years after judgment and shall reopen the action upon motion of the Attorney General alleging that a test or device has been used for the purpose or with the effect of denying or abridging the right to vote on account of race or color.

If the Attorney General determines that he has no reason to believe that any such test or device has been used during the five years preceding the filing of the action for the purpose or with the effect of denying or abridging the right to vote on account of race or color, he shall consent to the entry of such judgment.

*341 (b) The provisions of subsection (a) shall apply in any State or in any political subdivision of a state which (1) the Attorney General determines maintained on November 1, 1964, any test or device, and with respect to which (2) the Director of the Census determines that less than 50 per centum of the persons of voting age residing therein were registered on November 1, 1964, or that less than 50 per centum of such persons voted in the presidential election of November 1964.

A determination or certification of the Attorney General or of the Director of the Census under this section or under section 6 or section 13 shall not be reviewable in any court and shall be effective upon publication in the Federal Register.

(c) The phrase 'test or device' shall mean any requirement that a person as a prerequisite for voting or registration for voting (1) demonstrate the ability to read, write, understand, or interpret any matter, (2) demonstrate any educational achievement or his knowledge of any particular subject, (3) possess good moral character, or (4) prove his qualifications by the voucher of registered voters of members of any other class.

(d) For purposes of this section no State or political subdivision shall be determined to have engaged in the use of tests or devices for the purpose or with the effect of denying or abridging the right to vote on account of race or color if (1) incidents of such use have been few in number and have been promptly and effectively corrected by State or local action, (2) the continuing effect of such incidents has been eliminated, and (3) there is no reasonable probability of their recurrence in the future.

(e)(1) Congress hereby declares that to secure the rights under the fourteenth amendment of persons educated in American-flag schools in which the predominant *342 classroom language was other than English, it is necessary to prohibit the States from conditioning the right to vote of such persons on ability to read, write, understand, or interpret any matter in the English language.

(2) No person who demonstrates that he has successfully completed the sixth primary grade in a public school in, or a private school accredited by, any State or territory, the District of Columbia, or the Commonwealth of Puerto Rico in which the predominant classroom language was other than English, shall be denied the right to vote in any Federal, **826 State, or local election because of his inability to read, write, understand, or interpret any matter in the English language, except that in States in which State law provides that a different level of education is presumptive of literacy, he shall demonstrate that he has successfully completed an equivalent level of education in a public school in, or

a private school accredited by, any State or territory, the District of Columbia, or the Commonwealth of Puerto Rico in which the predominant classroom language was other than English.

Sec. 5. Whenever a State or political subdivision with respect to which the prohibitions set forth in section 4(a) are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1964, such State or subdivision may institute an action in the United States District Court for the District of Columbia for a declaratory judgment that such qualification, prerequisite, standard, practice, or procedure does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color, and unless and until the court enters such judgment no person shall be denied the right to vote for failure to comply with such qualification, prerequisite, standard, practice, ***343** or procedure: Provided, That such qualification, prerequisite, standard, practice, or procedure may be enforced without such proceeding if the qualification, prerequisite, standard, practice, or procedure has been submjtted by the chief legal officer or other appropriate official of such State or subdivision to the Attorney General and the Attorney General has not interposed an objection within sixty days after such submission, except that neither the Attorney General's failure to object nor a declaratory judgment entered under this section shall bar a subsequent action to enjoin enforcement of such qualification, prerequisite, standard, practice, or procedure. Any action under this section shall be heard and determined by a court of three judges in accordance with the provisions of section 2284 of title 28 of the United States Code and any appeal shall lie to the Supreme Court.

Sec. 6. Whenever (a) a court has authorized the appointment of examiners pursuant to the provisions of section 3(a), or (b) unless a declaratory judgment has been rendered under section 4(a), the Attorney General certifies with respect to any political subdivision named in, or included within the scope of, determinations made under section 4(b) that (1) he has received complaints in writing from twenty or more residents of such political subdivision alleging that they have been denied the right to vote under color of law on account of race or color, and that he believes such complaints to be meritorious, or (2) that in his judgment (considering, among other factors, whether the ratio of nonwhite persons to white persons registered to vote within such subdivision appears to him to be reasonably attributable to violations of the fifteenth amendment or whether substantial evidence exists that bona fide efforts are being made within such subdivision to comply with the fifteenth amendment), the appointment of examiners is otherwise necessary to ***344** enforce the guarantees of the fifteenth amendment, the Civil Service Commission shall appoint as many examiners for such subdivision as it may deem appropriate to prepare and maintain lists of persons eligible to vote in Federal, State, and local elections. Such examiners, hearing officers provided for in section 9(a), and other persons deemed necessary by the Commission to carry out the provisions and purposes of this Act shall be appointed, compensated, and separated without regard to the provisions of any statute administered by the Civil Service Commission, and service under this Act shall not be considered employment for the purposes of any statute administered by ****827** the Civil Service Commission, except the provisions of section 9 of the Act of August 2, 1939, as amended (5 U.S.C. 118i), prohibiting partisan political activity: Provided, That the Commission is authorized, after consulting the head of the appropriate department or agency, to designate suitable persons in the official service of the United States, with their consent, to serve in these positions. Examiners and hearing officers shall have the power to administer oaths.

Sec. 7. (a) The examiners for each political subdivision shall, at such places as the Civil Service Commission shall by regulation designate, examine

applicants concerning their qualifications for voting. An application to an examiner shall be in such form as the Commission may require and shall contain allegations that the applicant is not otherwise registered to vote.

(b) Any person whom the examiner finds, in accordance with instructions received under section 9(b), to have the qualifications prescribed by State law not inconsistent with the Constitution and laws of the United States shall promptly be placed on a list of eligible voters. A challenge to such listing may be made in accordance with section 9(a) and shall not be the basis for a prosecution under section 12 of this Act. The examiner ***345** shall certify and transmit such list, and any supplements as appropriate, at least once a month, to the offices of the appropriate election officials, with copies to the Attorney General and the attorney general of the State, and any such lists and supplements thereto transmitted during the month shall be available for public inspection on the last business day of the month and in any event not later than the forty-fifth day prior to any election. The appropriate State or local election official shall place such names on the official voting list. Any person whose name appears on the examiner's list shall be entitled and allowed to vote in the election district of his residence unless and until the appropriate election officials shall have been notified that such person has been removed from such list in accordance with subsection (d): Provided, That no person shall be entitled to vote in any election by virtue of this Act unless his name shall have been certified and transmitted on such a list to the offices of the appropriate election officials at least forty-five days prior to such election.

(c) The examiner shall issue to each person whose name appears on such a list a certificate evidencing his eligibility to vote.

(d) A person whose name appears on such a list shall be removed therefrom by an examiner if (1) such person has been successfully challenged in accordance with the procedure prescribed in section 9, or (2) he has been determined by an examiner to have lost his eligibility to vote under State law not inconsistent with the Constitution and the laws of the United States.

Sec. 8. Whenever an examiner is serving under this Act in any political subdivision, the Civil Service Commission may assign, at the request of the Attorney General, one or more persons, who may be officers of the United States, (1) to enter and attend at any place for holding an election in such subdivision for the purpose ***346** of observing whether persons who are entitled to vote are being permitted to vote, and (2) to enter and attend at any place for tabulating the votes cast at any election held in such subdivision for the purpose of observing whether votes cast by persons entitled to vote are being properly tabulated. Such persons so assigned shall report to an examiner appointed for such political subdivision, to the Attorney General, and if the appointment of examiners has been authorized pursuant to section 3(a), to the court.

Sec. 9. (a) Any challenge to a listing on an eligibility list prepared by an examiner shall be heard and determined by ****828** a hearing officer appointed by and responsible to the Civil Service Commission and under such rules as the Commission shall by regulation prescribe. Such challenge shall be entertained only if filed at such office within the State as the Civil Service Commission shall by regulation designate, and within ten days after the listing of the challenged person is made available for public inspection, and if supported by (1) the affidavits of at least two persons having personal knowledge of the facts constituting grounds for the challenge, and (2) a certification that a copy of the challenge and affidavits have been served by mail or in person upon the person challenged at his place of residence set out in the application. Such challenge shall be determined within fifteen days after it has been filed. A petition for review of the decision of the hearing officer may be filed in the United States court of appeals for the circuit in which the person challenged resides within fifteen days after service of such

decision by mail on the person petitioning for review but no decision of a hearing officer shall be reversed unless clearly erroneous. Any person listed shall be entitled and allowed to vote pending final determination by the hearing officer and by the court.

***347** (b) The times, places, procedures, and form for application and listing pursuant to this Act and removals from the eligibility lists shall be prescribed by regulations promulgated by the Civil Service Commission and the Commission shall, after consultation with the Attorney General, instruct examiners concerning applicable State law not inconsistent with the Constitution and laws of the United States with respect to (1) the qualifications required for listing, and (2) loss of eligibility to vote.

(c) Upon the request of the applicant or the challenger or on its own motion the Civil Service Commission shall have the power to require by subpena the attendance and testimonony of witnesses and the production of documentar evidence relating to any matter pending before it under the authority of this section. In case of contumacy or refusal to obey a subpena, any district court of the United States or the United States court of any territory or possession, or the District Court of the United States for the District of Columbia, within the jurisdiction of which said person guilty of contumacy or refusal to obey is found or resides or is domiciled or transacts business, or has appointed an agent for receipt of service of process, upon application by the Attorney General of the United States shall have jurisdiction to issue to such person an order requiring such person to appear before the Commission or a hearing officer, there to produce pertinent, relevant, and nonprivileged documentary evidence if so ordered, or there to give testimony touching the matter under investigation; and any failure to obey such order of the court may be punished by said court as a contempt thereof.

Sec. 10. (a) The Congress finds that the requirement of the payment of a poll tax as a precondition to voting (i) precludes persons of limited means from voting or imposes unreasonable financial hardship upon such persons ***348** as a precondition to their exercise of the franchise, (ii) does not bear a reasonable relationship to any legitimate State interest in the conduct of elections, and (iii) in some areas has the purpose or effect of denying persons the right to vote because of race or color. Upon the basis of these findings, Congress declares that the constitutional right of citizens to vote is denied or abridged in some areas by the requirement of the payment of a poll tax as a precondition to voting.

(b) In the exercise of the powers of Congress under section 5 of the fourteenth amendment and section 2 of the fifteenth amendment, the Attorney General is authorized and directed to institute forthwith in the name of the United States such actions, including actions against States or political subdivisions, ****829** for declaratory judgment or injunctive relief against the enforcement of any requirement of the payment of a poll tax as a precondition to voting, or substitute therefor enacted after November 1, 1964, as will be necessary to implement the declaration of subsection (a) and the purposes of this section.

(c) The district courts of the United States shall have jurisdiction of such actions which shall be heard and determined by a court of three judges in accordance with the provisions of section 2284 of title 28 of the United States Code and any appeal shall lie to the Supreme Court. It shall be the duty of the judge designated to hear the case to assign the case for hearing at the earliest practicable date, to participate in the hearing and determination thereof, and to cause the case to be in every way expedited.

(d) During the pendency of such actions, and thereafter if the courts, notwithstanding this action by the Congress, should declare the requirement of the payment of a poll tax to be constitutional, no citizen of the United States who is a resident of a State or political ***349** subdivision with respect to which determinations have been made under subsection 4(b) and a declaratory judgment has not been entered

under subsection 4(a), during the first year he becomes otherwise entitled to vote by reason of registration by State or local officials or listing by an examiner, shall be denied the right to vote for failure to pay a poll tax if he tenders payment of such tax for the current year to an examiner or to the appropriate State or local official at least forty-five days prior to election, whether or not such tender would be timely or adequate under State law. An examiner shall have authority to accept such payment from any person authorized by this Act to make an application for listing, and shall issue a receipt for such payment. The examiner shall transmit promptly any such poll tax payment to the office of the State or local official authorized to receive such payment under State law, together with the name and address of the applicant.

Sec. 11. (a) No person acting under color of law shall fail or refuse to permit any person to vote who is entitled to vote under any provision of this Act or is otherwise qualified to vote, or willfully fail or refuse to tabulate, count, , and report such person's vote

(b) No person, whether acting under color of law or otherwise, shall intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any person for voting or attempting to vote, or intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any person for urging or aiding any person to vote or attempt to vote, or intimidate, threaten, or coerce any person for exercising any powers or duties under section 3(a), 6, 8, 9, 10, or 12(e).

(c) Whoever knowingly or willfully gives false information as to his name, address, or period of residence in the voting district for the purpose of establishing his eligibility to register or vote, or conspires with another ***350** individual for the purpose of encouraging his false registration to vote or illegal voting, or pays or offers to pay or accepts payment either for registration to vote or for voting shall be fined not more than $10,000 or imprisoned not more than five years, or both: Provided, however, That this provision shall be applicable only to general, special, or primary elections held solely or in part for the purpose of selecting or electing any candidate for the office of President, Vice President, presidential elector, Member of the United States Senate, Member of the United States House of Representatives, or Delegates or Commissioners from the territories or possessions, or Resident Commissioner of the Commonwealth of Puerto Rico.

(d) Whoever, in any matter within the jurisdiction of an examiner or hearing officer knowingly and willfully falsifies or conceals a material fact, or makes any false, fictitious, or fraudulent statements ****830** or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than five years, or both.

Sec. 12. (a) Whoever shall deprive or attempt to deprive any person of any right secured by section 2, 3, 4, 5, 7, or 10 or shall violate section 11(a) or (b), shall be fined not more than $5,000, or imprisoned not more than five years, or both.

(b) Whoever, within a year following an election in a political subdivision in which an examiner has been appointed (1) destroys, defaces, mutilates, or otherwise alters the marking of a paper ballot which has been cast in such election, or (2) alters any official record of voting in such election tabulated from a voting machine or otherwise, shall be fined not more than $5,000, or imprisoned not more than five years, or both.

***351** (c) Whoever conspires to violate the provisions of subsection (a) or (b) of this section, or interferes with any right secured by section 2, 3, 4, 5, 7, 10, or 11(a) or (b) shall be fined not more than $5,000, or imprisoned not more than five years, or both.

(d) Whenever any person has engaged or there are reasonable grounds to believe that any person is about to engage in any act or practice prohibited by section

2, 3, 4, 5, 7, 10, 11, or subsection (b) of this section, the Attorney General may institute for the United States, or in the name of the United States, an action for preventive relief, including an application for a temporary or permanent injunction, restraining order, or other order, and including an order directed to the State and State or local election officials to require them (a) to permit persons listed under this Act of vote and (2) to count such votes.

(e) Whenever in any political subdivision in which there are examiners appointed pursuant to this Act any persons allege to such an examiner within forty-eight hours after the closing of the polls that notwithstanding (1) their listing under this Act or registration by an appropriate election official and (2) their eligibility to vote, they have not been permitted to vote in such election, the examiner shall forthwith notify the Attorney General if such allegations in his opinion appear to be well founded. Upon receipt of such notification, the Attorney General may forthwith file with the district court an application for an order providing for the marking, casting, and counting of the ballots of such persons and requiring the inclusion of their votes in the total vote before the results of such election shall be deemed final and any force or effect given thereto. The district court shall hear and determine such matters immediately after the filing of such application. The remedy provided *352 in this subsection shall not preclude any remedy available under State or Federal law.

(f) The district courts of the United States shall have jurisdiction of proceedings instituted pursuant to this section and shall exercise the same without regard to whether a person asserting rights under the provisions of this Act shall have exhausted any administrative or other remedies that may be provided by law.

Sec. 13. Listing procedures shall be terminated in any political subdivision of any State (a) with respect to examiners appointed pursuant to clause (b) of section 6 whenever the Attorney General notifies the Civil Service Commission, or whenever the District Court for the District of Columbia determines in an action for declaratory judgment brought by any political subdivision with respect to which the Director of the Census has determined that more than 50 per centum of the nonwhite persons of voting age residing therein are registered to vote, (1) that all persons listed by an examiner for such subdivision have been placed on the appropriate voting registration **831 roll, and (2) that there is no longer reasonable cause to believe that persons will be deprived of or denied the right to vote on account of race or color in such subdivision, and (b), with respect to examiners appointed pursuant to section 3(a), upon order of the authorizing court. A political subdivision may petition the Attorney General for the termination of listing procedures under clause (a) of this section, and may petition the Attorney General to request the Director of the Census to take such survey or census as may be appropriate for the making of the determination provided for in this section. The District Court for the District of Columbia shall have jurisdiction to require such survey or census to be made by the Director of the Census and it shall require him to do so if it deems the Attorney *353 General's refusal to request such survey or census to be arbitrary or unreasonable.

Sec. 14. (a) All cases of criminal contempt arising under the provisions of this Act shall be governed by section 151 of the Civil Rights Act of 1957 (42 U.S.C. 1995).

(b) No court other than the District Court for the District of Columbia or a court of appeals in any proceeding under section 9 shall have jurisdiction to issue any declaratory judgment pursuant to section 4 or section 5 or any restraining order or temporary or permanent injunction against the execution or enforcement of any provision of this Act or any action of any Federal officer or employee pursuant hereto.

(c) (1) The terms 'vote' or 'voting' shall include all action necessary to make a vote effective in any

primary, special, or general election, including, but not limited to, registration, listing pursuant to this Act, or other action required by law prerequisite to voting, casting a ballot, and having such ballot counted properly and included in the appropriate totals of votes cast with respect to candidates for public or party office and propositions for which votes are received in an election.

(2) The term 'political subdivision' shall mean any county or parish, except that where registration for voting is not conducted under the supervision of a county or parish, the term shall include any other subdivision of a State which conducts registration for voting.

(d) In any action for a declaratory judgment brought pursuant to section 4 or section 5 of this Act, subpenas for witnesses who are required to attend the District Court for the District of Columbia may be served in any judicial district of the United States: Provided, That no writ of subpena shall issue for witnesses without the District of Columbia at a greater distance than one hundred *354 miles from the place of holding court without the permission of the District Court for the District of Columbia being first had upon proper application and cause shown.

Sec. 15. Section 2004 of the Revised Statutes (42 U.S.C. 1971), as amended by section 131 of the Civil Rights Act of 1957 (71 Stat. 637), and amended by section 601 of the Civil Rights Act of 1960 (74 Stat. 90), and as further amended by section 101 of the Civil Rights act of 1964 (78 Stat. 241), is further amended as follows:

(a) Delete the word 'Federal' wherever it appears in subsections (a) and (c);

(b) Repeal subsection (f) and designate the present subsections (g) and (h) as (f) and (g), respectively.

Sec. 16. The Attorney General and the Secretary of Defense, jointly, shall make a full and complete study to determine whether, under the laws or practices of any State or States, there are preconditions to voting, which might tend to result in discrimination against citizens serving in the Armed Forces of the United States seeking to vote. Such officials shall, jointly, make a report to the Congress not later than June 30, **832 1966, containing the results of such study, together with a list of any States in which such preconditions exist, and shall include in such report such recommendations for legislation as they deem advisable to prevent discrimination in voting against citizens serving in the Armed Forces of the United States.

Sec. 17. Nothing in this Act shall be construed to deny, impair, or otherwise adversely affect the right to vote of any person registered to vote under the law of any State or political subdivision.

Sec. 18. There are hereby authorized to be appropriated such sums as are necessary to carry out the provisions of this Act.

*355 Sec. 19. If any provision of this Act or the application thereof to any person or circumstances is held invalid, the remainder of the Act and the application of the provision to other persons not similarly situated or to other circumstances shall not be affected thereby.

Approved August 6, 1965.

Mr. Justice BLACK, concurring and dissenting.

I agree with substantially all of the Court's opinion sustaining the power of Congress under s 2 of the Fifteenth Amendment to suspend state literacy tests and similar voting qualifications and to authorize the Attorney General to secure the appointment of federal examiners to register qualified voters in various sections of the country. Section 1 of the Fifteenth Amendment provides that 'The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of

race, color, or previous condition of servitude.' In addition to this unequivocal command to the States and the Federal Government that no citizen shall have his right to vote denied or abridged because of race or color, s 2 of the Amendment unmistakably gives Congress specific power to go further and pass appropriate legislation to protect this right to vote against any method of abridgement no matter how subtle. Compare my dissenting opinion in Bell v. State of Maryland, 378 U.S. 226, 318, 84 S.Ct. 1814, 1864, 12 L.Ed.2d 822. I have no doubt whatever as to the power of Congress under s 2 to enact the provisions of the Voting Rights Act of 1965 dealing with the suspension of state voting tests that have been used as notorious means to deny and abridge voting rights on racial grounds. This same congressional power necessarily exists to authorize appointment of federal examiners. I also agree with the judgment of the Court upholding s 4(b) of *356 the Act which sets out a formula for determining when and where the major remedial sections of the Act take effect. I reach this conclusion, however, for a somewhat different reason than that stated by the Court, which is that 'the coverage formula is rational in both practice and theory.' I do not base my conclusion on the fact that the formula is rational, for it is enough for me that Congress by creating this formula has merely exercised its hitherto unquestioned and undisputed power to decide when, where, and upon what conditions its laws shall go into effect. By stating in specific detail that the major remedial sections of the Act are to be applied in areas where certain conditions exist, and by granting the Attorney General and the Director of the Census unreviewable power to make the mechanical determination of which areas come within the formula of s 4(b), I believe that Congress has acted within its established power to set out preconditions upon which the Act is to go into effect. See, e.g., Martin v. Mott, 12 Wheat. 19, 6 L.Ed. 537; United States v. George S. Bush & Co., 310 U.S. 371, 60 S.Ct. 944, 84 L.Ed. 1259; Hirabayashi v. United States, 320 U.S. 81, 63 S.Ct. 1375, 87 L.Ed. 1774.

Though, as I have said, I agree with most of the Court's conclusions, I dissent from its holding that every part **833 of s 5 of the Act is constitutional. Section 4(a), to which s 5 is linked, suspends for five years all literacy tests and similar devices in those States coming within the formula of s 4(b). Section 5 goes on to provide that a State covered by s 4(b) can in no way amend its constitution or laws relating to voting without first trying to persuade the Attorney General of the United States or the Federal District Court for the District of Columbia that the new proposed laws do not have the purpose and will not have the effect of denying the right to vote to citizens on account of their race or color. I think this section is unconstitutional on at least two grounds.

*357 (a) The Constitution gives federal courts jurisdiction over cases and controversies only. If it can be said that any case or controversy arises under this section which gives the District Court for the District of Columbia jurisdiction to approve or reject state laws or constitutional amendments, then the case or controversy must be between a State and the United States Government. But it is hard for me to believe that a justiciable controversy can arise in the constitutional sense from a desire by the United States Government or some of its officials to determine in advance what legislative provisions a State may enact or what constitutional amendments it may adopt. If this dispute between the Federal Government and the States amounts to a case or controversy it is a far cry from the traditional constitutional notion of a case or controversy as a dispute over the meaning of enforceable laws or the manner in which they are applied. And if by this section Congress has created a case or controversy, and I do not believe it has, then it seems to me that the most appropriate judicial forum for settling these important questions is this Court acting under its original Art. III, s 2, jurisdiction to try cases in which a State is a party. [FN1] At least a trial in this Court would treat the States with the dignity to which they should be entitled as constituent members of our Federal Union.

FN1. If s 14(b) of the Act by stating that no court other than the District Court for the District of Columbia shall issue a judgment under s 5 is an attempt to limit the constitutionally created original jurisdiction of this Court, then I think that section is also unconstitutional.

The form of words and the manipulation of presumptions used in s 5 to create the illusion of a case or controversy should not be allowed to cloud the effect of that section. By requiring a State to ask a federal court to approve the validity of a proposed law which has in no way become operative, Congress has asked the State to ***358** secure precisely the type of advisory opinion our Constitution forbids. As I have pointed out elsewhere, see my dissenting opinion in Griswold v. State of Connecticut, 381 U.S. 479, 507, n. 6, pp. 513--515, 85 S.Ct. 1678, 1694, pp. 1697, 1698, 14 L.Ed.2d 510, some of those drafting our Constitution wanted to give the federal courts the power to issue advisory opinions and propose new laws to the legislative body. These suggestions were rejected. We should likewise reject any attempt by Congress to flout constitutional limitations by authorizing federal courts to render advisory opinions when there is no case or controversy before them. Congress has ample power to protect the rights of citizens to vote without resorting to the unnecessarily circuitous, indirect and unconstitutional route it has adopted in this section.

(b) My second and more basic objection to s 5 is that Congress has here exercised its power under s 2 of the Fifteenth Amendment through the adoption of means that conflict with the most basic principles of the Constitution. As the Court says the limitations of the power granted under s 2 are the same as the limitations imposed on the exercise of any of the powers expressly granted Congress by the Constitution. The classic****834** formulation of these constitutional limitations was stated by Chief Justice Marshall when he said in McCulloch v. State of Maryland, 4 Wheat. 316, 421, 4 L.Ed. 579, 'Let the end be legitimate, let it be within the scope of the constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the constitution, are constitutional.' (Emphasis added.) Section 5, by providing that some of the States cannot pass state laws or adopt state constitutional amendments without first being compelled to beg federal authorities to approve their policies, so distorts our constitutional structure of government as to render any distinction drawn in the Constitution between state and federal power almost meaningless. One ***359** of the most basic premises upon which our structure of government was founded was that the Federal Government was to have certain specific and limited powers and no others, and all other power was to be reserved either 'to the States respectively, or to the people.' Certainly if all the provisions to the King's 'transporting us beyond power of the Federal Government and reserve other power to the States are to mean anything, they mean at least that the States have power to pass laws and amend their constitutions without first sending their officials hundreds of miles away to beg federal authorities to approve them. [FN2] Moreover, it seems to me that s 5 which gives federal officials power to veto state laws they do not like is in direct conflict with the clear command of our Constitution that 'The United States shall guarantee to every State in this Union a Republican Form of Government.' I cannot help but believe that the inevitable effect of any such law which forces any one of the States to entreat federal authorities in faraway places for approval of local laws before they can become effective is to ***360** create the impression that the State or States treated in this way are little more than conquered provinces. And if one law concerning voting can make the States plead for this approval by a distant federal court or the United States Attorney General, other laws on different subjects can force the States to seek the advance approval not only of the Attorney General but of the President himself or any other chosen members of his staff. It is inconceivable to me that such a radical degradation of state power was intended in any of the provisions of our Constitution

or its Amendments. Of course I do not mean to cast any doubt whatever upon the indisputable power of the Federal Government to invalidate a state law once enacted and operative on the ground that it intrudes into the area of supreme federal power. But the Federal Government has heretofore always been content to exercise this power to protect federal supremacy by authorizing its agents to bring lawsuits against ****835** state officials once and operative state law has created an actual case and controversy. A federal law which assumes the power to compel the States to submit in advance any proposed legislation they have for approval by federal agents approaches dangerously near to wiping the States out as useful and effective units in the government of our country. I cannot agree to any constitutional interpretation that leads inevitably to such a result.

FN2. The requirement that States come to Washington to have their laws judged is reminiscent of the deeply resented practices used by the English crown in dealing with the American colonies. One of the abuses complained of most bitterly was the King's practice of holding legislative and judicial proceedings in inconvenient and distant places. The signers of the Declaration of Independence protested that the King 'has called together legislative bodies at places unusual, uncomfortable, and distant from the depository of their public Records, for the sole purpose of fatiguing them into compliance with his measures,' and they objected to the King's 'transporting us beyound Seas to be tried for pretended offences.' These abuses were fresh in the minds of the Framers of our Constitution and in part caused them to include in Art. 3, s 2, the provision that criminal trials 'shall be held in the State where the said Crimes shall have been committed.' Also included in the Sixth Amendment was the requirement that a defendant in a criminal prosecution be tried by a 'jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law.'

I see no reason to read into the Constitution meanings it did not have when it was adopted and which have not been put into it since. The proceedings of the original Constitutional Convention show beyond all doubt that the power to veto or negative state laws was denied Congress. On several occasions proposals were submitted to the convention to grant this power to Congress. These proposals were debated extensively and on every occasion when submitted for vote they were overwhelmingly rejected.***361** [FN3] The refusal to give Congress this extraordinary power to veto state laws was based on the belief that if such power resided in Congress the States would be helpless to function as effective governments. [FN4] Since that time neither the Fifteenth Amendment nor any other Amendment to the Constitution has given the slightest indication of a purpose to grant Congress the power to veto state laws either by itself or its agents. Nor does any provision in the Constitution endow the federal courts with power to participate with state legislative bodies in determining what state policies shall be enacted into law. The judicial power to invalidate a law in a case or controversy after the law has become effective is a long way from the power to prevent a State from passing a law. I cannot agree with the Court that Congress--denied a power in itself to veto a state law--can delegate this same power to the Attorney General or the District Court for the District of Columbia. For the effect on the States is the same in both cases--they cannot pass their laws without sending their agents to the City of Washington to plead to federal officials for their advance approval.

FN3. See Debates in the Federal Convention of 1787 as reported by James Madison in Documents Illustrative of the Formation of the Union of the American States (1927), pp. 605, 789, 856.

FN4. One speaker expressing what seemed to be the prevailing opinion of the delegates said of the proposal, 'Will any State ever agree to be bound hand & foot in this manner. It is worse than making mere corporations of them * * *.' Id., at 604.

In this and other prior Acts Congress has quite properly vested the Attorney General with extremely broad power to protect voting rights of citizens against discrimination on account of race or color. Section 5 viewed in this context is of very minor importance and in my judgment is likely to serve more as an irritant to ***362** the States than as an aid to the enforcement of the Act. I would hold s 5 invalid for the reasons stated above with full confidence that the Attorney General has ample power to give vigorous, expeditious and effective protection to the voting rights of all citizens. [FN5]

FN5. Section 19 of the Act provides as follows:
'If any provision of this Act or the application thereof to any person or circumstances is held invalid, the remainder of the Act and the application of the provision to other persons not similarly situated or to other circumstances shall not be affected thereby.'

383 U.S. 301, 86 S.Ct. 803, 15 L.Ed.2d 769

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PART 51—PROCEDURES FOR THE ADMINISTRATION OF SECTION 5 OF THE VOTING RIGHTS ACT OF 1965, AS AMENDED

Subpart A—General Provisions

Sec.

Subpart B—Procedures for Submission to the Attorney General

AUTHORITY: 5 U.S.C. 301; 28 U.S.C. 509, 510; and 42 U.S.C. 1973c.

SOURCE: 52 FR 490, Jan. 6, 1987, unless otherwise noted.

Subpart A—General Provisions

§ 51.1 Purpose.

(a) Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c, prohibits the enforcement in any jurisdiction covered by section 4(b) of the Act, 42 U.S.C. 1973b(b), of any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on the date used to determine coverage, until either:

(1) A declaratory judgment is obtained from the U.S. District Court for the District of Columbia that such qualification, prerequisite, standard, practice, or procedure does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group, or

(2) It has been submitted to the Attorney General and the Attorney General has interposed no objection within a 60-day period following submission.

(b) In order to make clear the responsibilities of the Attorney General under section 5 and the interpretation of the Attorney General of the responsibility imposed on others under this section, the procedures in this part have been established to govern the administration of section 5.

§ 51.2 Definitions.

As used in this part—

Act means the Voting Rights Act of 1965, 79 Stat. 437, as amended by the Civil Rights Act of 1968, 82 Stat. 73, the Voting Rights Act Amendments of 1970, 84 Stat. 314, the District of Columbia Delegate Act, 84 Stat. 853, the Voting Rights Act Amendments of 1975, 89 Stat. 400, and the Voting Rights Act Amendments of 1982, 96 Stat. 131, 42 U.S.C. 1973 *et seq.* Section numbers, such as "section 14(c)(3)," refer to sections of the Act.

Attorney General means the Attorney General of the United States or the delegate of the Attorney General.

Change affecting voting means any voting qualification, prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on the date used to determine coverage under section 4(b) and includes, *inter alia*, the examples given in §51.13.

Covered jurisdiction is used to refer to a State, where the determination referred to in §51.4 has been made on a statewide basis, and to a political subdivision, where the determination has not been made on a statewide basis.

Language minorities or *language minority group* is used, as defined in the Act, to refer to persons who are American Indian, Asian American, Alaskan Natives, or of Spanish heritage. (Sections 14(c)(3) and 203(e)). See 28 CFR part 55, Interpretative Guidelines: Implementation of the Provisions of the Voting Rights Act Regarding Language Minority Groups.

Political subdivision is used, as defined in the Act, to refer to "any county or parish, except that where registration for voting is not conducted under the supervision of a county or parish, the term shall include any other subdivision of a State which conducts registration for voting." (Section 14(c)(2)).

Preclearance is used to refer to the obtaining of the declaratory judgment described in section 5, to the failure of the Attorney General to interpose an objection pursuant to section 5, or to the withdrawal of an objection by the Attorney General pursuant to §51.48(b).

Submission is used to refer to the written presentation to the Attorney General by an appropriate official of any change affecting voting.

Submitting authority means the jurisdiction on whose behalf a submission is made.

Vote and *voting* are used, as defined in the Act, to include "all action necessary to make a vote effective in any primary, special, or general election, including, but not limited to, registration, listing pursuant to this Act, or other action required by law prerequisite to voting, casting a ballot, and having such ballot counted properly and included in the appropriate totals of votes cast with respect to candidates for public or party office and propositions for which votes are received in an election." (Section 14(c)(1)).

§ 51.3 Delegation of authority.

The responsibility and authority for determinations under section 5 have been delegated by the Attorney General to the Assistant Attorney General, Civil Rights Division. With the exception of objections and decisions following the reconsideration of objections, the Chief of the Voting Section is authorized to act on behalf of the Assistant Attorney General.

§ 51.4 Date used to determine coverage; list of covered jurisdictions.

(a) The requirement of section 5 takes effect upon publication in the FEDERAL REGISTER of the requisite determinations of the Director of the Census and the Attorney General under section 4(b). These determinations are not reviewable in any court. (Section 4(b)).

(b) Section 5 requires the preclearance of changes affecting voting made since the date used for the determination of coverage. For each covered jurisdiction that date is one of the following: November 1, 1964; November 1, 1968; or November 1, 1972.

(c) The appendix to this part contains a list of covered jurisdictions, together with the applicable date used to determine coverage and the FEDERAL REGISTER citation for the determination of coverage.

§ 51.6 [illegible] coverage [illegible]

A covered jurisdiction or a political subdivision of a covered State may terminate the application of section 5 (or bail out) by obtaining the declaratory judgment described in section 4(a) of the Act.

§ 51.7 Political parties.

All political parties within a covered jurisdiction (e.g., counties, cities, school districts) are subject to the requirement of section 5.

§ 51.7 Political parties.

Certain activities of political parties are subject to the preclearance requirement of section 5. A change affecting voting effected by a political party is subject to the preclearance requirement:

(a) If the change relates to a public electoral function of the party and

(b) If the party is acting under authority explicitly or implicitly granted by a covered jurisdiction or political subunit subject to the preclearance requirement of section 5.

For example, changes with respect to the recruitment of party members, the conduct of political campaigns, and the drafting of party platforms are not subject to the preclearance requirement. Changes with respect to the conduct of primary elections at which party nominees, delegates to party conventions, or party officials are chosen are subject to the preclearance requirement of section 5. Where appropriate the term "jurisdiction" (but not "covered jurisdiction") includes political parties.

§ 51.8 Section 3 coverage.

Under section 3(c) of the Act, a court in voting rights litigation can order as relief that a jurisdiction not subject to the preclearance requirement of section 5 preclear its voting changes by submitting them either to the court or to the Attorney General. Where a jurisdiction is required under section 3(c) to preclear its voting changes, and it elects to submit the proposed changes to the Attorney General for preclearance, the procedures in this part will apply.

§ 51.9 Computation of time.

(a) The Attorney General shall have 60 days in which to interpose an objection to a submitted change affecting voting.

(b) Except as specified in §§ 51.37, 51.39, and 51.42 the 60-day period shall commence upon receipt by the Department of Justice of a submission.

(c) The 60-day period shall mean 60 calendar days, with the day of receipt of the submission not counted. If the final day of the period should fall on a Saturday, Sunday, any day designated as a holiday by the President or Congress of the United States, or any other day that is not a day of regular business for the Department of Justice, the Attorney General shall have until the close of the next full business day in which to interpose an objection. The date of the Attorney General's response shall be the date on which it is mailed to the submitting authority.

§ 51.10 Requirement of action for declaratory judgment or submission to the Attorney General.

Section 5 requires that, prior to enforcement of any change affecting voting, the jurisdiction that has enacted or seeks to administer the change must either:

(a) Obtain a judicial determination from the U.S. District Court for the District of Columbia that denial or abridgment of the right to vote on account of race, color, or membership in a language minority group is not the purpose and will not be the effect of the change or

(b) Make to the Attorney General a proper submission of the change to which no objection is interposed.

It is unlawful to enforce a change affecting voting without obtaining preclearance under section 5. The obligation to obtain such preclearance is not relieved by unlawful enforcement.

[52 FR 490, Jan. 6, 1987; 52 FR 2848, Jan. 23, 1987]

§ 51.11 Right to bring suit.

Submission to the Attorney General does not affect the right of the submitting authority to bring an action in the U.S. District Court for the District of Columbia for a declaratory judgment

that the change affecting voting does not have the prohibited discriminatory purpose or effect.

§ 51.12 Scope of requirement.

Any change affecting voting, even though it appears to be minor or indirect, returns to a prior practice or procedure, ostensibly expands voting rights, or is designed to remove the elements that caused objection by the Attorney General to a prior submitted change, must meet the section 5 preclearance requirement.

§ 51.13 Examples of changes.

Changes affecting voting include, but are not limited to, the following examples:

(a) Any change in qualifications or eligibility for voting.

(b) Any change concerning registration, balloting, and the counting of votes and any change concerning publicity for or assistance in registration or voting.

(c) Any change with respect to the use of a language other than English in any aspect of the electoral process.

(d) Any change in the boundaries of voting precincts or in the location of polling places.

(e) Any change in the constituency of an official or the boundaries of a voting unit (e.g., through redistricting, annexation, deannexation, incorporation, reapportionment, changing to at-large elections from district elections, or changing to district elections from at-large elections).

(f) Any change in the method of determining the outcome of an election (e.g., by requiring a majority vote for election or the use of a designated post or place system).

(g) Any change affecting the eligibility of persons to become or remain candidates, to obtain a position on the ballot in primary or general elections, or to become or remain holders of elective offices.

(h) Any change in the eligibility and qualification procedures for independent candidates.

(i) Any change in the term of an elective office or an elected official or in the offices that are elective (e.g., by shortening the term of an office, changing from election to appointment or staggering the terms of offices).

(j) Any change affecting the necessity of or methods for offering issues and propositions for approval by referendum.

(k) Any change affecting the right or ability of persons to participate in political campaigns which is effected by a jurisdiction subject to the requirement of section 5.

§ 51.14 Recurrent practices.

Where a jurisdiction implements a practice or procedure periodically or upon certain established contingencies, a change occurs:

(a) The first time such a practice or procedure is implemented by the jurisdiction,

(b) When the manner in which such a practice or procedure is implemented by the jurisdiction is changed, or

(c) When the rules for determining when such a practice or procedure will be implemented are changed.

The failure of the Attorney General to object to a recurrent practice or procedure constitutes preclearance of the future use of the practice or procedure if its recurrent nature is clearly stated or described in the submission or is expressly recognized in the final response of the Attorney General on the merits of the submission.

§ 51.15 Enabling legislation and contingent or nonuniform requirements.

(a) With respect to legislation (1) that enables or permits the State or its political subunits to institute a voting change or (2) that requires or enables the State or its political sub-units to institute a voting change upon some future event or if they satisfy certain criteria, the failure of the Attorney General to interpose an objection does not exempt from the preclearance requirement the implementation of the particular voting change that is enabled, permitted, or required, unless that implementation is explicitly included and described in the submission of such parent legislation.

(b) For example, such legislation includes—

(1) Legislation authorizing counties, cities, school districts, or agencies or

officials of the State to institute any of the changes described in § 51.13,

(2) Legislation requiring a political subunit that chooses a certain form of government to follow specified election procedures,

(3) Legislation requiring or authorizing political subunits of a certain size or a certain location to institute specified changes,

(4) Legislation requiring a political subunit to follow certain practices or procedures unless the subunit's charter or ordinances specify to the contrary.

§ 51.16 Distinction between changes in procedure and changes in substance.

The failure of the Attorney General to interpose an objection to a procedure for instituting a change affecting voting does not exempt the substantive change from the preclearance requirement. For example, if the procedure for the approval of an annexation is changed from city council approval to approval in a referendum, the preclearance of the new procedure does not exempt an annexation accomplished under the new procedure from the preclearance requirement.

§ 51.17 Special elections.

(a) The conduct of a special election (e.g., an election to fill a vacancy; an initiative, referendum, or recall election; or a bond issue election) is subject to the preclearance requirement to the extent that the jurisdiction makes changes in the practices or procedures to be followed.

(b) Any discretionary setting of the date for a special election or scheduling of events leading up to or following a special election is subject to the preclearance requirement.

(c) A jurisdiction conducting a referendum election to ratify a change in a practice or procedure that affects voting may submit the change to be voted on at the same time that it submits any changes involved in the conduct of the referendum election. A jurisdiction wishing to receive preclearance for the change to be ratified should state clearly that such preclearance is being requested. See § 51.22 of this part.

§ 51.18 Court-ordered changes.

(a) *In general.* Changes affecting voting that are ordered by a Federal court are subject to the preclearance requirement of section 5 to the extent that they reflect the policy choices of the submitting authority.

(b) *Subsequent changes.* Where a court-ordered change is not itself subject to the preclearance requirement, subsequent changes necessitated by the court order but decided upon by the jurisdiction remain subject to preclearance. For example, voting precinct and polling place changes made necessary by a court-ordered redistricting plan are subject to section 5 review.

(c) *In emergencies.* A Federal court's authorization of the emergency interim use without preclearance of a voting change does not exempt from section 5 review any use of the practice not explicitly authorized by the court.

§ 51.19 Request for notification concerning voting litigation.

A jurisdiction subject to the preclearance requirement of section 5 that becomes involved in any litigation concerning voting is requested promptly to notify the Chief, Voting Section, Civil Rights Division, Department of Justice, P.O. Box 66128, Washington, DC 20035–6128. Such notification will not be considered a submission under section 5.

[52 FR 490, Jan. 6, 1987, as amended by Order 1214–87, 52 FR 33409, Sept. 3, 1987]

Subpart B—Procedures for Submission to the Attorney General

§ 51.20 Form of submissions.

(a) Submissions may be made in letter or any other written form.

(b) The Attorney General will accept certain machine readable data in the following forms of magnetic media: 3½" 1.4 megabyte MS–DOS formatted diskettes; 5¼" 1.2 megabyte MS–DOS formatted floppy disks; nine-track tape (1600/6250 BPI). Unless requested by the Attorney General, data provided on magnetic media need not be provided in hard copy.

(c) All magnetic media shall be clearly labelled with the following information:

(1) Submitting authority.

(2) Name, address, title, and telephone number of contact person.

(3) Date of submission cover letter.

(4) Statement identifying the voting change(s) involved in the submission.

The label shall be affixed to each magnetic medium, and the information included on the label shall also be contained in a documentation file on the magnetic medium. If the information identified above is provided as a disk operating system (DOS) file, it shall be formatted in a standard American Standard Code for Information Interchange (ASCII) character code, with a line feed or carriage return control character starting in position 80. If the information identified above is provided other than as DOS files, it shall be formatted as ASCII text (or Extended Binary Coded Decimal Interchange Code (EBCDIC) if IBM standard labels are used), 80 byte fixed record length, blocked in a multiple of 80 with a blocksize no larger than 32 kilobytes, and with no carriage return or line feed.

(d) Each magnetic medium (floppy disk or tape) provided must be accompanied by a printed description of its contents, including an identification by name and/or location of each data file that is contained on the medium, a detailed record layout for each such file, a record count for each such file, and a full description of the magnetic medium format.

(e) All data files shall be provided in a fixed record-length format using alphanumeric ASCII values. The first 50 records of each such file shall be printed on hard copy and shall be attached to the printed description of the file. Proprietary and/or commercial software system data files (e.g. SAS, SPSS, dBase, Lotus 1–2–3) and data files containing compressed data or binary data fields will not be accepted. Nine-track tapes shall be clearly marked with printed labels to indicate their density, and manner of labelling (ANSI, IBM, or unlabelled). The printed label shall also include the record count, the record length, the blocksize, the dataset name (DSN) if it is a labelled tape, and the file number of each file on the tape.

[52 FR 490, Jan. 6, 1987, as amended by Order No. 1536–91, 56 FR 51936, Oct. 16, 1991]

§ 51.21 Time of submissions.

Changes affecting voting should be submitted as soon as possible after they become final.

§ 51.22 Premature submissions.

The Attorney General will not consider on the merits:

(a) Any proposal for a change affecting voting submitted prior to final enactment or administrative decision or

(b) Any proposed change which has a direct bearing on another change affecting voting which has not received section 5 preclearance.

However, with respect to a change for which approval by referendum, a State or Federal court or a Federal agency is required, the Attorney General may make a determination concerning the change prior to such approval if the change is not subject to alteration in the final approving action and if all other action necessary for approval has been taken.

§ 51.23 Party and jurisdiction responsible for making submissions.

(a) Changes affecting voting shall be submitted by the chief legal officer or other appropriate official of the submitting authority or by any other authorized person on behalf of the submitting authority. When one or more counties or other political subunits within a State will be affected, the State may make a submission on their behalf. Where a State is covered as a whole, State legislation (except legislation of local applicability) or other changes undertaken or required by the State shall be submitted by the State.

(b) A change effected by a political party (see § 51.7) may be submitted by an appropriate official of the political party.

§ 51.24 Address for submissions.

(a) *Delivery by U.S. Postal Service.* Submissions sent to the Attorney General via the U.S. Postal Service shall be addressed to the Chief, Voting Section, Civil Rights Division, Department

of Justice, P.O. Box 66128, Washington, DC 20035–6128.

(b) *Delivery by other means.* Submissions sent to the Attorney General by carriers *other than* the U.S. Postal Service should be addressed or may be delivered to the Chief, Voting Section, Civil Rights Division, Department of Justice, 320 First Street, NW., room 818A, Washington, DC 20001.

(c) *Special marking.* The envelope and first page of the submission shall be clearly marked: Submission under section 5 of the Voting Rights Act.

[Order 1214–87, 52 FR 33409, Sept. 3, 1987, as amended by Order No. 1793–93, 58 FR 51225, Oct. 1, 1993]

§ 51.25 Withdrawal of submissions.

(a) A jurisdiction may withdraw a submission at any time prior to a final decision by the Attorney General. Notice of the withdrawal of a submission must be made in writing, addressed to the Chief, Voting Section, as specified in § 51.24 of this part. The submission shall be deemed withdrawn upon receipt of the notice.

(b) Notice of withdrawals will be given to interested parties registered under § 51.32.

[52 FR 490, Jan. 6, 1987, as amended by Order 1214–87, 52 FR 33409, Sept. 3, 1987]

Subpart C—Contents of Submissions

§ 51.26 General.

(a) The source of any information contained in a submission should be identified.

(b) Where an estimate is provided in lieu of more reliable statistics, the submission should identify the name, position, and qualifications of the person responsible for the estimate and should briefly describe the basis for the estimate.

(c) Submissions should be no longer than is necessary for the presentation of the appropriate information and materials.

(d) The Attorney General will not accept for review any submission that fails to describe the subject change in sufficient particularity to satisfy the minimum requirements of § 51.27(c).

(e) A submitting authority that desires the Attorney General to consider any information supplied as part of an earlier submission may incorporate such information by reference by stating the date and subject matter of the earlier submission and identifying the relevant information.

(f) Where information requested by this subpart is relevant but not known or available, or is not applicable, the submission should so state.

(g) The following Office of Management and Budget control number under the Paperwork Reduction Act applies to the collection of information requirements contained in these Procedures: OMB No. 1190–0001 (expires February 28, 1994). See 5 CFR 1320.13.

[52 FR 490, Jan. 6, 1987, as amended by Order No. 1284–88, 53 FR 25327, July 6, 1988; Order No. 1496–91, 56 FR 26032, June 6, 1991]

§ 51.27 Required contents.

Each submission should contain the following information or documents to enable the Attorney General to make the required determination pursuant to section 5 with respect to the submitted change affecting voting:

(a) A copy of any ordinance, enactment, order, or regulation embodying a change affecting voting.

(b) A copy of any ordinance, enactment, order, or regulation embodying the voting practice that is proposed to be repealed, amended, or otherwise changed.

(c) If the change affecting voting either is not readily apparent on the face of the documents provided under paragraphs (a) and (b) of this section or is not embodied in a document, a clear statement of the change explaining the difference between the submitted change and the prior law or practice, or explanatory materials adequate to disclose to the Attorney General the difference between the prior and proposed situation with respect to voting.

(d) The name, title, address, and telephone number of the person making the submission.

(e) The name of the submitting authority and the name of the jurisdiction responsible for the change, if different.

(f) If the submission is not from a State or county, the name of the county and State in which the submitting authority is located.

(g) Identification of the person or body responsible for making the change and the mode of decision (e.g., act of State legislature, ordinance of city council, administrative decision by registrar).

(h) A statement identifying the statutory or other authority under which the jurisdiction undertakes the change and a description of the procedures the jurisdiction was required to follow in deciding to undertake the change.

(i) The date of adoption of the change affecting voting.

(j) The date on which the change is to take effect.

(k) A statement that the change has not yet been enforced or administered, or an explanation of why such a statement cannot be made.

(l) Where the change will affect less than the entire jurisdiction, an explanation of the scope of the change.

(m) A statement of the reasons for the change.

(n) A statement of the anticipated effect of the change on members of racial or language minority groups.

(o) A statement identifying any past or pending litigation concerning the change or related voting practices.

(p) A statement that the prior practice has been precleared (with the date) or is not subject to the preclearance requirement and a statement that the procedure for the adoption of the change has been precleared (with the date) or is not subject to the preclearance requirement, or an explanation of why such statements cannot be made.

(q) For redistrictings and annexations: the items listed under § 51.28 (a)(1) and (b)(1); for annexations only: the items listed under § 51.28(o)(3).

(r) Other information that the Attorney General determines is required for an evaluation of the purpose or effect of the change. Such information may include items listed in § 51.28 and is most likely to be needed with respect to redistrictings, annexations, and other complex changes. In the interest of time such information should be furnished with the initial submission relating to voting changes of this type. When such information is required, but not provided, the Attorney General shall notify the submitting authority in the manner provided in § 51.37.

§ 51.28 Supplemental contents.

Review by the Attorney General will be facilitated if the following information, where pertinent, is provided in addition to that required by § 51.27.

(a) *Demographic information.* (1) Total and voting age population of the affected area before and after the change, by race and language group. If such information is contained in publications of the U.S. Bureau of the Census, reference to the appropriate volume and table is sufficient.

(2) The number of registered voters for the affected area by voting precinct before and after the change, by race and language group.

(3) Any estimates of population, by race and language group, made in connection with the adoption of the change.

(4) Demographic data provided on magnetic media shall be based upon the Bureau of the Census Public Law 94–171 file unique block identity code of state, county, tract, and block.

(5) Demographic data on magnetic media that are provided in conjunction with a redistricting shall be contained in a table of equivalencies giving the census block to district assignments in the following format:

(i) Each census block record (including those with zero population) will be followed by one or more additional fields indicating the district assignment for the census block in one or more plans.

(ii) All district assignments in the plan fields shall be right justified and blank filled if the assignment is less than four characters.

(iii) The file structure shall be as follows:

Field	PL 94–171 reference name	Length	Data type
State	STATEFP	2	Numeric.
County	CNTY	3	Numeric.
Tract	TRACT/BNA	6	Alpha/Numeric.
Block	BLCK	4	Alpha/Numeric.

Field	PL 94–171 reference name	Length	Data type
Plan 1 District	User supplied	4	Alpha/Numeric.
Plan 2 District	User supplied	4	Alpha/Numeric.
Plan 3 District, etc.	.....	.....	
Plan n District	User supplied	4	Alpha/Numeric.

(iv) State and county shall be identified using the Federal Information Processing Standards (FIPS–55) code.

(v) Census tracts shall be left justified, and census blocks shall be left justified and blank filled if less than four characters.

(vi) Unused plan fields shall be blank filled.

(vii) In addition to the information identified in § 51.20 (c) through (e), the documentation file accompanying the block level equivalency file shall contain the following information:

(A) The file structure.

(B) The total number of plans.

(C) For each plan field, an identification of the plan (e.g., state senate, congressional, county board, city council, school board) and its status or nature (e.g., plan currently in effect, adopted plan, alternative plan and sponsors).

(D) The number of districts in each plan field.

(E) Whether the plan field contains a complete or partial plan.

(F) Any additional information the jurisdiction deems relevant such as bill number, date of adoption, etc., and a listing of any modifications the submitting authority has made that alter the structure of the TIGER/line geographic file.

(b) *Maps.* Where any change is made that revises the constituency that elects any office or affects the boundaries of any geographic unit or units defined or employed for voting purposes (e.g., redistricting, annexation, change from district to at-large elections) or that changes voting precinct boundaries, polling place locations, or voter registration sites, maps in duplicate of the area to be affected, containing the following information:

(1) The prior and new boundaries of the voting unit or units.

(2) The prior and new boundaries of voting precincts.

(3) The location of racial and language minority groups.

(4) Any natural boundaries or geographical features that influenced the selection of boundaries of the prior or new units.

(5) The location of prior and new polling places.

(6) The location of prior and new voter registration sites.

(c) *Annexations.* For annexations, in addition to that information specified elsewhere, the following information:

(1) The present and expected future use of the annexed land (e.g., garden apartments, industrial park).

(2) An estimate of the expected population, by race and language group, when anticipated development, if any, is completed.

(3) A statement that all prior annexations subject to the preclearance requirement have been submitted for review, or a statement that identifies all annexations subject to the preclearance requirement that have not been submitted for review. See § 51.61(b).

(d) *Election returns.* Where a change may affect the electoral influence of a racial or language minority group, returns of primary and general elections conducted by or in the jurisdiction, containing the following information:

(1) The name of each candidate.

(2) The race or language group of each candidate, if known.

(3) The position sought by each candidate.

(4) The number of votes received by each candidate, by voting precinct.

(5) The outcome of each contest.

(6) The number of registered voters, by race and language group, for each voting precinct for which election returns are furnished. Information with respect to elections held during the last ten years will normally be sufficient.

(7) Election related data containing any of the information described above that are provided on magnetic media shall conform to the requirements of § 51.20 (b) through (e). Election related data that cannot be accurately presented in terms of census blocks may be identified by county and by precinct.

(e) *Language usage.* Where a change is made affecting the use of the language of a language minority group in the electoral process, information that will enable the Attorney General to determine whether the change is consistent with the minority language requirements of the Act. The Attorney General's interpretation of the minority language requirements of the Act is contained in Interpretative Guidelines: Implementation of the Provisions of the Voting Rights Act Regarding Language Minority Groups, 28 CFR part 55.

(f) *Publicity and participation.* For submissions involving controversial or potentially controversial changes, evidence of public notice, of the opportunity for the public to be heard, and of the opportunity for interested parties to participate in the decision to adopt the proposed change and an account of the extent to which such participation, especially by minority group members, in fact took place. Examples of materials demonstrating public notice or participation include:

(1) Copies of newspaper articles discussing the proposed change.

(2) Copies of public notices that describe the proposed change and invite public comment or participation in hearings and statements regarding where such public notices appeared (e.g., newspaper, radio, or television, posted in public buildings, sent to identified individuals or groups).

(3) Minutes or accounts of public hearings concerning the proposed change.

(4) Statements, speeches, and other public communications concerning the proposed change.

(5) Copies of comments from the general public.

(6) Excerpts from legislative journals containing discussion of a submitted enactment, or other materials revealing its legislative purpose.

(g) *Availability of the submission.* (1) Copies of public notices that announce the submission to the Attorney General, inform the public that a complete duplicate copy of the submission is available for public inspection (e.g., at the county courthouse) and invite comments for the consideration of the Attorney General and statements regarding where such public notices appeared.

(2) Information demonstrating that the submitting authority, where a submission contains magnetic media, made the magnetic media available to be copied or, if so requested, made a hard copy of the data contained on the magnetic media available to be copied.

(h) *Minority group contacts.* For submissions from jurisdictions having a significant minority population, the names, addresses, telephone numbers, and organizational affiliation (if any) of racial or language minority group members residing in the jurisdiction who can be expected to be familiar with the proposed change or who have been active in the political process.

[52 FR 490, Jan. 6, 1987, as amended by Order No. 1536–91, 56 FR 51836, Oct. 16, 1991]

Subpart D—Communications From Individuals and Groups

§ 51.29 Communications concerning voting changes.

Any individual or group may send to the Attorney General information concerning a change affecting voting in a jurisdiction to which section 5 applies.

(a) Communications may be in the form of a letter stating the name, address, and telephone number of the individual or group, describing the alleged change affecting voting and setting forth evidence regarding whether the change has or does not have a discriminatory purpose or effect, or simply bringing to the attention of the Attorney General the fact that a voting change has occurred.

(b) The communications should be mailed to the Chief, Voting Section, Civil Rights Division, Department of Justice, P.O. Box 66128, Washington, DC 20035–6128. The envelope and first page should be marked: Comment under section 5 of the Voting Rights Act.

(c) Comments by individuals or groups concerning any change affecting voting may be sent at any time; however, individuals and groups are encouraged to comment as soon as they learn of the change.

(d) Department of Justice officials and employees shall comply with the request of any individual that his or her identity not be disclosed to any person outside the Department, to the

extent permitted by the Freedom of Information Act, 5 U.S.C. 552. In addition, whenever it appears to the Attorney General that disclosure of the identity of an individual who provided information regarding a change affecting voting "would constitute a clearly unwarranted invasion of personal privacy" under 5 U.S.C. 552(b)(6), the identity of the individual shall not be disclosed to any person outside the Department.

(e) When an individual or group desires the Attorney General to consider information that was supplied in connection with an earlier submission, it is not necessary to resubmit the information but merely to identify the earlier submission and the relevant information.

[52 FR 490, Jan. 6, 1987, as amended by Order 1214–87, 52 FR 33409, Sept. 3, 1987]

§ 51.30 Action on communications from individuals or groups.

(a) If there has already been a submission received of the change affecting voting brought to the attention of the Attorney General by an individual or group, any evidence from the individual or group shall be considered along with the materials submitted and materials resulting from any investigation.

(b) If such a submission has not been received, the Attorney General shall advise the appropriate jurisdiction of the requirement of section 5 with respect to the change in question.

§ 51.31 Communications concerning voting suits.

Individuals and groups are urged to notify the Chief, Voting Section, Civil Rights Division, of litigation concerning voting in jurisdictions subject to the requirement of section 5.

§ 51.32 Establishment and maintenance of registry of interested individuals and groups.

The Attorney General shall establish and maintain a Registry of Interested Individuals and Groups, which shall contain the name and address of any individual or group that wishes to receive notice of section 5 submissions. Information relating to this registry and to the requirements of the Privacy Act of 1974, 5 U.S.C. 552a *et seq.*, is contained in JUSTICE/CRT–004. 48 FR 5334 (Feb. 4, 1983).

Subpart E—Processing of Submissions

§ 51.33 Notice to registrants concerning submissions.

Weekly notice of submissions that have been received will be given to the individuals and groups who have registered for this purpose under § 51.32. Such notice will also be given when section 5 declaratory judgment actions are filed or decided.

§ 51.34 Expedited consideration.

(a) When a submitting authority is required under State law or local ordinance or otherwise finds it necessary to implement a change within the 60-day period following submission, it may request that the submission be given expedited consideration. The submission should explain why such consideration is needed and provide the date by which a determination is required.

(b) Jurisdictions should endeavor to plan for changes in advance so that expedited consideration will not be required and should not routinely request such consideration. When a submitting authority demonstrates good cause for expedited consideration the Attorney General will attempt to make a decision by the date requested. However, the Attorney General cannot guarantee that such consideration can be given.

(c) Notice of the request for expedited consideration will be given to interested parties registered under § 51.32.

§ 51.35 Disposition of inappropriate submissions.

The Attorney General will make no response on the merits with respect to an inappropriate submission but will notify the submitting authority of the inappropriateness of the submission. Such notification will be made as promptly as possible and no later than the 60th day following receipt and will

include an explanation of the inappropriateness of the submission. Inappropriate submissions include the submission of changes that do not affect voting (see, e.g., § 51.13), the submission of standards, practices, or procedures that have not been changed (see, e.g., §§ 51.4, 51.14), the submission of changes that affect voting but are not subject to the requirement of section 5 (see, e.g., § 51.18), premature submissions (see §§ 51.22, 51.61(b)), submissions by jurisdictions not subject to the preclearance requirement (see §§ 51.4, 51.5), and deficient submissions (see § 51.28(d)).

§ 51.36 Release of information concerning submissions.

The Attorney General shall have the discretion to call to the attention of the submitting authority or any interested individual or group information or comments related to a submission.

§ 51.37 Obtaining information from the submitting authority.

(a) If a submission does not satisfy the requirements of § 51.27, the Attorney General may request from the submitting authority any omitted information considered necessary for the evaluation of the submission. The request shall be made by letter and shall be made within the 60-day period and as promptly as possible after receipt of the original submission. See also § 51.28(d).

(b) A copy of the request shall be sent to any party who has commented on the submission or has requested notice of the Attorney General's action thereon.

(c) The Attorney General shall notify the submitting authority that a new 60-day period in which the Attorney General may interpose an objection shall commence upon the receipt of a response from the submitting authority that provides the information requested or states that the information is unavailable. The Attorney General can request further information within the new 60-day period, but such a further request shall not suspend the running of the 60-day period, nor shall the receipt of a response to such a request operate to begin a new 60-day period.

(d) The receipt of a response from the submitting authority that neither provides the information requested nor states that such information is unavailable shall not commence a new 60-day period. It is the practice of the Attorney General to notify the submitting authority that its response is inadequate and to provide such notification as soon as possible after the receipt of the inadequate response.

(e) If, after a request for further information is made pursuant to this section, the information requested becomes available to the Attorney General from a source other than the submitting authority, the Attorney General shall promptly notify the submitting authority by letter, and the 60-day period will commence upon the date of such notification.

(f) Notice of the request for and receipt of further information will be given to interested parties registered under § 51.32.

§ 51.38 Obtaining information from others.

(a) The Attorney General may at any time request relevant information from governmental jurisdictions and from interested groups and individuals and may conduct any investigation or other inquiry that is deemed appropriate in making a determination.

(b) If a submission does not contain evidence of adequate notice to the public, and the Attorney General believes that such notice is essential to a determination, steps will be taken by the Attorney General to provide public notice sufficient to invite interested or affected persons to provide evidence as to the presence or absence of a discriminatory purpose or effect. The submitting authority shall be advised when any such steps are taken.

§ 51.39 Supplementary submissions.

(a) When a submitting authority provides documents and written information materially supplementing a submission (or a request for reconsideration of an objection) for evaluation as if part of its original submission, or, before the expiration of the 60-day period, makes a second submission such that the two submissions cannot be independently considered, the 60-day

period for the original submission will be calculated from the receipt of the supplementary information or from the second submission.

(b) The Attorney General will notify the submitting authority when the 60-day period for a submission is recalculated from the receipt of supplementary information or from the receipt of a second related submission.

(c) Notice of the receipt of supplementary information will be given to interested parties registered under § 51.32.

§ 51.40 Failure to complete submissions.

If after 60 days the submitting authority has not provided further information in response to a request made pursuant to § 51.37(a), the Attorney General, absent extenuating circumstances and consistent with the burden of proof under section 5 described in § 51.52 (a) and (c), may object to the change, giving notice as specified in § 51.44.

§ 51.41 Notification of decision not to object.

(a) The Attorney General shall within the 60-day period allowed notify the submitting authority of a decision to interpose no objection to a submitted change affecting voting.

(b) The notification shall state that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the change.

(c) A copy of the notification shall be sent to any party who has commented on the submission or has requested notice of the Attorney General's action thereon.

§ 51.42 Failure of the Attorney General to respond.

It is the practice and intention of the Attorney General to respond to each submission within the 60-day period. However, the failure of the Attorney General to make a written response within the 60-day period constitutes preclearance of the submitted change, provided the submission is addressed as specified in § 51.24 and is appropriate for a response on the merits as described in § 51.35.

§ 51.43 Reexamination of decision not to object.

After notification to the submitting authority of a decision to interpose no objection to a submitted change affecting voting has been given, the Attorney General may reexamine the submission if, prior to the expiration of the 60-day period, information indicating the possibility of the prohibited discriminatory purpose or effect is received. In this event, the Attorney General may interpose an objection provisionally and advise the submitting authority that examination of the change in light of the newly raised issues will continue and that a final decision will be rendered as soon as possible.

§ 51.44 Notification of decision to object.

(a) The Attorney General shall within the 60-day period allowed notify the submitting authority of a decision to interpose an objection. The reasons for the decision shall be stated.

(b) The submitting authority shall be advised that the Attorney General will reconsider an objection upon a request by the submitting authority.

(c) The submitting authority shall be advised further that notwithstanding the objecton it may institute an action in the U.S. District Court for the District of Columbia for a declaratory judgment that the change objected to by the Attorney General does not have the prohibited discriminatory purpose or effect.

(d) A copy of the notification shall be sent to any party who has commented on the submission or has requested notice of the Attorney General's action thereon.

(e) Notice of the decision to interpose an objection will be given to interested parties registered under § 51.32.

§ 51.45 Request for reconsideration.

(a) The submitting authority may at any time request the Attorney General to reconsider an objection.

(b) Requests may be in letter or any other written form and should contain relevant information or legal argument.

(c) Notice of the request will be given to any party who commented on the

submission or requested notice of the Attorney General's action thereon and to interested parties registered under § 51.32. In appropriate cases the Attorney General may request the submitting authority to give local public notice of the request.

§ 51.46 Reconsideration of objection at the instance of the Attorney General.

(a) Where there appears to have been a substantial change in operative fact or relevant law, an objection may be reconsidered, if it is deemed appropriate, at the instance of the Attorney General.

(b) Notice of such a decision to reconsider shall be given to the submitting authority, to any party who commented on the submission or requested notice of the Attorney General's action thereon, and to interested parties registered under § 51.32, and the Attorney General shall decide whether to withdraw or to continue the objection only after such persons have had a reasonable opportunity to comment.

§ 51.47 Conference.

(a) A submitting authority that has requested reconsideration of an objection pursuant to § 51.45 may request a conference to produce information or legal argument in support of reconsideration.

(b) Such a conference shall be held at a location determined by the Attorney General and shall be conducted in an informal manner.

(c) When a submitting authority requests such a conference, individuals or groups that commented on the change prior to the Attorney General's objection or that seek to participate in response to any notice of a request for reconsideration shall be notified and given the opportunity to confer.

(d) The Attorney General shall have the discretion to hold separate meetings to confer with the submitting authority and other interested groups or individuals.

(e) Such conferences will be open to the public or to the press only at the discretion of the Attorney General and with the agreement of the participating parties.

§ 51.48 Decision after reconsideration.

(a) The Attorney General shall within the 60-day period following the receipt of a reconsideration request or following notice given under § 51.46(b) notify the submitting authority of the decision to continue or withdraw the objection, provided that the Attorney General shall have at least 15 days following any conference that is held in which to decide. (See also § 51.39(a).) The reasons for the decision shall be stated.

(b) The objection shall be withdrawn if the Attorney General is satisfied that the change does not have the purpose and will not have the effect of discriminating on account of race, color, or membership in a language minority group.

(c) If the objection is not withdrawn, the submitting authority shall be advised that notwithstanding the objection it may institute an action in the U.S. District Court for the District of Columbia for a declaratory judgment that the change objected to by the Attorney General does not have the prohibited purpose or effect.

(d) An objection remains in effect until either it is withdrawn by the Attorney General or a declaratory judgment with respect to the change in question is entered by the U.S. District Court for the District of Columbia.

(e) A copy of the notification shall be sent to any party who has commented on the submission or reconsideration or has requested notice of the Attorney General's action thereon.

(f) Notice of the decision after reconsideration will be given to interested parties registered under § 51.32.

§ 51.49 Absence of judicial review.

The decision of the Attorney General not to object to a submitted change or to withdraw an objection is not reviewable. The preclearance by the Attorney General of a voting change does not constitute the certification that the voting change satisfies any other requirement of the law beyond that of section 5, and, as stated in section 5, "(n)either an affirmative indication by the Attorney General that no objection

will be made, nor the Attorney General's failure to object, nor a declaratory judgment entered under this section shall bar a subsequent action to enjoin enforcement of such qualification, prerequisite, standard, practice, or procedure."

§ 51.50 Records concerning submissions.

(a) Section 5 files: The Attorney General shall maintain a section 5 file for each submission, containing the submission, related written materials, correspondence, memoranda, investigative reports, data provided on magnetic media, notations concerning conferences with the submitting authority or any interested individual or group, and copies of letters from the Attorney General concerning the submission.

(b) Objection files: Brief summaries regarding each submission and the general findings of the Department of Justice investigation and decision concerning it will be prepared when a decision to interpose, continue, or withdraw an objection is made. Files of these summaries, arranged by jurisdiction and by the date upon which such decision is made, will be maintained.

(c) Computer file: Records of all submissions and of their dispositions by the Attorney General shall be electronically stored and periodically retrieved in the form of computer printouts.

(d) The contents of the files in paper or microfiche form described in paragraphs (a) through (c) of this section shall be available for inspection and copying by the public during normal business hours at the Voting Section, Civil Rights Division, Department of Justice, Washington, DC. Those who desire to inspect information that has been provided on magnetic media will be provided a copy of that information in the same form as it was received. Materials that are exempt from inspection under the Freedom of Information Act, 5 U.S.C. 552(b), may be withheld at the discretion of the Attorney General. Communications from individuals who have requested confidentiality or with respect to whom the Attorney General has determined that confidentiality is appropriate under §51.28(d) shall be available only as provided by §51.29(d). Applicable fees, if any, for the copying of the contents of these files are contained in the Department of Justice regulations implementing the Freedom of Information Act, 28 CFR 16.10.

[52 FR 490, Jan. 6, 1987; 52 FR 2666, Jan. 23, 1987, as amended by Order No. 1536–91, 56 FR 51837, Oct. 16, 1991]

Subpart F—Determinations by the Attorney General

§ 51.51 Purpose of the subpart.

The purpose of this subpart is to inform submitting authorities and other interested parties of the factors that the Attorney General considers relevant and of the standards by which the Attorney General will be guided in making substantive determinations under section 5 and in defending section 5 declaratory judgment actions.

§ 51.52 Basic standard.

(a) *Surrogate for the court.* Section 5 provides for submission of a voting change to the Attorney General as an alternative to the seeking of a declaratory judgment from the U.S. District Court for the District of Columbia. Therefore, the Attorney General shall make the same determination that would be made by the court in an action for a declaratory judgment under section 5: Whether the submitted change has the purpose or will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. The burden of proof is on a submitting authority when it submits a change to the Attorney General for preclearance, as it would be if the proposed change were the subject of a declaratory judgment action in the U.S. District Court for the District of Columbia. See *South Carolina* v. *Katzenbach*, 383 U.S. 301, 328, 335 (1966).

(b) *No objection.* If the Attorney General determines that the submitted change does not have the prohibited purpose or effect, no objection shall be interposed to the change.

(c) *Objection.* An objection shall be interposed to a submitted change if the Attorney General is unable to determine that the change is free of discriminatory purpose and effect. This

includes those situations where the evidence as to the purpose or effect of the change is conflicting and the Attorney General is unable to determine that the change is free of discriminatory purpose and effect.

§ 51.53 Information considered.

The Attorney General shall base a determination on a review of material presented by the submitting authority, relevant information provided by individuals or groups, and the results of any investigation conducted by the Department of Justice.

§ 51.54 Discriminatory effect.

(a) *Retrogression.* A change affecting voting is considered to have a discriminatory effect under section 5 if it will lead to a retrogression in the position of members of a racial or language minority group (i.e., will make members of such a group worse off than they had been before the change) with respect to their opportunity to exercise the electoral franchise effectively. See *Beer* v. *United States*, 425 U.S. 130, 140–42 (1976).

(b) *Benchmark.* (1) In determining whether a submitted change is retrogressive the Attorney General will normally compare the submitted change to the voting practice or procedure in effect at the time of the submission. If the existing practice or procedure upon submission was not in effect on the jurisdiction's applicable date for coverage (specified in the appendix) and is not otherwise legally enforceable under section 5, it cannot serve as a benchmark, and, except as provided in paragraph (b)(4) of this section, the comparison shall be with the last legally enforceable practice or procedure used by the jurisdiction.

(2) The Attorney General will make the comparison based on the conditions existing at the time of the submission.

(3) The implementation and use of an unprecleared voting change subject to section 5 review under §51.18(a) does not operate to make that unprecleared change a benchmark for any subsequent change submitted by the jurisdiction. See §51.18(c).

(4) Where at the time of submission of a change for section 5 review there exists no other lawful practice or procedure for use as a benchmark (e.g., where a newly incorporated college district selects a method of election) the Attorney General's preclearance determination will necessarily center on whether the submitted change was designed or adopted for the purpose of discriminating against members of racial or language minority groups.

§ 51.55 Consistency with constitutional and statutory requirements.

(a) *Consideration in general.* In making a determination the Attorney General will consider whether the change is free of discriminatory purpose and retrogressive effect in light of, and with particular attention being given to, the requirements of the 14th, 15th, and 24th amendments to the Constitution, 42 U.S.C. 1971(a) and (b), sections 2, 4(a), 4(f)(2), 4(f)(4), 201, 203(c), and 206 of the Act, and other constitutional and statutory provisions designed to safeguard the right to vote from denial or abridgment on account of race, color, or membership in a language minority group.

(b) *Section 2.* Preclearance under section 5 of a voting change will not preclude any legal action under section 2 by the Attorney General if implementation of the change demonstrates that such action is appropriate.

[52 FR 490, Jan. 6, 1987, as amended at 63 FR 24109, May 1, 1998]

§ 51.56 Guidance from the courts.

In making determinations the Attorney General will be guided by the relevant decisions of the Supreme Court of the United States and of other Federal courts.

§ 51.57 Relevant factors.

Among the factors the Attorney General will consider in making determinations with respect to the submitted changes affecting voting are the following:

(a) The extent to which a reasonable and legitimate justification for the change exists.

(b) The extent to which the jurisdiction followed objective guidelines and fair and conventional procedures in adopting the change.

(c) The extent to which the jurisdiction afforded members of racial and

language minority groups an opportunity to participate in the decision to make the change.

(d) The extent to which the jurisdiction took the concerns of members of racial and language minority groups into account in making the change.

§ 51.58 Representation.

(a) *Introduction.* This section and the sections that follow set forth factors—in addition to those set forth above—that the Attorney General considers in reviewing redistrictings (see § 51.59), changes in electoral systems (see § 51.60), and annexations (see § 51.61).

(b) *Background factors.* In making determinations with respect to these changes involving voting practices and procedures, the Attorney General will consider as important background information the following factors:

(1) The extent to which minorities have been denied an equal opportunity to participate meaningfully in the political process in the jurisdiction.

(2) The extent to which minorities have been denied an equal opportunity to influence elections and the decision-making of elected officials in the jurisdiction.

(3) The extent to which voting in the jurisdiction is racially polarized and political activities are racially segregated.

(4) The extent to which the voter registration and election participation of minority voters have been adversely affected by present or past discrimination.

§ 51.59 Redistrictings.

In determining whether a submitted redistricting plan has the prohibited purpose or effect the Attorney General, in addition to the factors described above, will consider the following factors (among others):

(a) The extent to which malapportioned districts deny or abridge the right to vote of minority citizens.

(b) The extent to which minority voting strength is reduced by the proposed redistricting.

(c) The extent to which minority concentrations are fragmented among different districts.

(d) The extent to which minorities are overconcentrated in one or more districts.

(e) The extent to which available alternative plans satisfying the jurisdiction's legitimate governmental interests were considered.

(f) The extent to which the plan departs from objective redistricting criteria set by the submitting jurisdiction, ignores other relevant factors such as compactness and contiguity, or displays a configuration that inexplicably disregards available natural or artificial boundaries.

(g) The extent to which the plan is inconsistent with the jurisdiction's stated redistricting standards.

§ 51.60 Changes in electoral systems.

In making determinations with respect to changes in electoral systems (e.g., changes to or from the use of at-large elections, changes in the size of elected bodies) the Attorney General, in addition to the factors described above, will consider the following factors (among others):

(a) The extent to which minority voting strength is reduced by the proposed change.

(b) The extent to which minority concentrations are submerged into larger electoral units.

(c) The extent to which available alternative systems satisfying the jurisdiction's legitimate governmental interests were considered.

§ 51.61 Annexations.

(a) *Coverage.* Annexations, even of uninhabited land, are subject to section 5 preclearance to the extent that they alter or are calculated to alter the composition of a jurisdiction's electorate. In analyzing annexations under section 5, the Attorney General only considers the purpose and effect of the annexation as it pertains to voting.

(b) *Section 5 review.* It is the practice of the Attorney General to review all of a jurisdiction's unprecleared annexations together. See *City of Pleasant Grove* v. *United States*, C.A. No. 80-2589 (D.D.C. Oct. 7, 1981).

(c) *Relevant factors.* In making determinations with respect to annexations, the Attorney General, in addition to

the factors described above, will consider the following factors (among others):

(1) The extent to which a jurisdiction's annexations reflect the purpose or have the effect of excluding minorities while including other similarly situated persons.

(2) The extent to which the annexations reduce a jurisdiction's minority population percentage, either at the time of the submission or, in view of the intended use, for the reasonably foreseeable future.

(3) Whether the electoral system to be used in the jurisdiction fails fairly to reflect minority voting strength as it exists in the post-annexation jurisdiction. See *City of Richmond* v. *United States*, 422 U.S. 358, 367–72 (1975).

[52 FR 490, Jan. 6, 1987; 52 FR 2648, Jan. 23, 1987]

Subpart G—Sanctions

§ 51.62 Enforcement by the Attorney General.

(a) The Attorney General is authorized to bring civil actions for appropriate relief against violations of the Act's provisions, including section 5. See section 12(d).

(b) Certain violations of section 5 may be subject to criminal sanctions. See section 12(a) and (c).

§ 51.63 Enforcement by private parties.

Private parties have standing to enforce section 5.

§ 51.64 Bar to termination of coverage (bailout).

(a) Section 4(a) of the Act sets out the requirements for the termination of coverage (bailout) under section 5. See § 51.5. Among the requirements for bailout is compliance with section 5, as described in section 4(a), during the ten years preceding the filing of the bailout action and during its pendency.

(b) In defending bailout actions, the Attorney General will not consider as a bar to bailout under section 4(a)(1)(E) a section 5 objection to a submitted voting standard, practice, or procedure if the objection was subsequently withdrawn on the basis of a determination by the Attorney General that it had originally been interposed as a result of the Attorney General's misinterpretation of fact or mistake in the law, or if the unmodified voting standard, practice, or procedure that was the subject of the objection received section 5 preclearance by means of a declaratory judgment from the U.S. District Court for the District of Columbia.

(c) Notice will be given to interested parties registered under § 51.32 when bailout actions are filed or decided.

Subpart H—Petition To Change Procedures

§ 51.65 Who may petition.

Any jurisdiction or interested individual or group may petition to have these procedural guidelines amended.

§ 51.66 Form of petition.

A petition under this subpart may be made by informal letter and shall state the name, address, and telephone number of the petitioner, the change requested, and the reasons for the change.

§ 51.67 Disposition of petition.

The Attorney General shall promptly consider and dispose of a petition under this subpart and give notice of the disposition, accompanied by a simple statement of the reasons, to the petitioner.

APPENDIX TO PART 51—JURISDICTIONS COVERED UNDER SECTION 4(b) OF THE VOTING RIGHTS ACT, AS AMENDED

The preclearance requirement of section 5 of the Voting Rights Act, as amended, applies in the following jurisdictions. The applicable date is the date that was used to determine coverage and the date after which changes affecting voting are subject to the preclearance requirement.

Some jurisdictions, for example, Yuba County, California, are included more than once because they have been determined on more than one occasion to be covered under section 4(b).

Jurisdiction	Applicable Date	Federal Register citation	
		Volume and page	Date
Alabama	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
Alaska	Nov. 1, 1972	40 FR 49422	Oct. 22, 1975.
Arizona	Nov. 1, 1972	40 FR 43746	Sept. 23, 1975.
California:			
Kings County	Nov. 1, 1972	40 FR 43746	Sept. 23, 1975.
Merced County	Nov. 1, 1972	40 FR 43746	Sept. 23, 1975.
Monterey County	Nov. 1, 1968	36 FR 5809	Mar. 27, 1971.
Yuba County	Nov. 1, 1968	36 FR 5809	Mar. 27, 1971.
Yuba County	Nov. 1, 1972	41 FR 784	Jan. 5, 1976.
Florida:			
Collier County	Nov. 1, 1972	41 FR 34329	Aug. 13, 1976.
Hardee County	Nov. 1, 1972	40 FR 43746	Sept. 23, 1975.
Hendry County	Nov. 1, 1972	41 FR 34329	Aug. 13, 1976.
Hillsborough County	Nov. 1, 1972	40 FR 43746	Sept. 23, 1975.
Monroe County	Nov. 1, 1972	40 FR 43746	Sept. 23, 1975.
Georgia	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
Louisiana	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
Michigan:			
Allegan County:			
Clyde Township	Nov. 1, 1972	41 FR 34329	Aug. 13, 1976.
Saginaw County:			
Buena Vista Township	Nov. 1, 1972	41 FR 34329	Aug. 13, 1976.
Mississippi	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
New Hampshire:			
Cheshire County:			
Rindge Town	Nov. 1, 1968	39 FR 16912	May 10, 1974.
Coos County:			
Millsfield Township	Nov. 1, 1968	39 FR 16912	May 10, 1974.
Pinkhams Grant	Nov. 1, 1968	39 FR 16912	May 10, 1974.
Stewartstown Town	Nov. 1, 1968	39 FR 16912	May 10, 1974.
Stratford Town	Nov. 1, 1968	39 FR 16912	May 10, 1974.
Grafton County:			
Benton Town	Nov. 1, 1968	39 FR 16912	May 10, 1974.
Hillsborough County:			
Antrim Town	Nov. 1, 1968	39 FR 16912	May 10, 1974.
Merrimack County:			
Boscawen Town	Nov. 1, 1968	39 FR 16912	May 10, 1974.
Rockingham County:			
Newington Town	Nov. 1, 1968	39 FR 16912	May 10, 1974.
Sullivan County:			
Unity Town	Nov. 1, 1968	39 FR 16912	May 10, 1974.
New York:			
Bronx County	Nov. 1, 1968	36 FR 5809	Mar. 27, 1971.
Bronx County	Nov. 1, 1972	40 FR 43746	Sept. 23, 1975.
Kings County	Nov. 1, 1968	36 FR 5809	Mar. 27, 1971.
Kings County	Nov. 1, 1972	40 FR 43746	Sept. 23, 1975.
New York County	Nov. 1, 1968	36 FR 5809	Mar. 27, 1971.
North Carolina:			
Anson County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
Beaufort County	Nov. 1, 1964	31 FR 5081	Mar. 29, 1966.
Bertie County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
Bladen County	Nov. 1, 1964	31 FR 5081	Mar. 29, 1966.
Camden County	Nov. 1, 1964	31 FR 3317	Mar. 2, 1966.
Caswell County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
Chowan County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
Cleveland County	Nov. 1, 1964	31 FR 5081	Mar. 29, 1966.
Craven County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
Cumberland County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
Edgecombe County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
Franklin County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
Gaston County	Nov. 1, 1964	31 FR 5081	Mar. 29, 1966.
Gates County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
Granville County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
Greene County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
Guilford County	Nov. 1, 1964	31 FR 5081	Mar. 29, 1966.
Halifax County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
Harnett County	Nov. 1, 1964	31 FR 5081	Mar. 29, 1966.
Hertford County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
Hoke County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
Jackson County	Nov. 1, 1972	40 FR 49422	Oct. 22, 1975.
Lee County	Nov. 1, 1964	31 FR 5081	Mar. 29, 1966.
Lenoir County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.

Jurisdiction	Applicable Date	Federal Register citation	
		Volume and page	Date
Martin County	Nov. 1, 1964	31 FR 19	Jan. 4, 1966.
Nash County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
Northampton County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
Onslow County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
Pasquotank County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
Pasquotank County	Nov. 1, 1964	31 FR 3317	Mar. 2, 1966.
Person County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
Pitt County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
Robeson County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
Rockingham County	Nov. 1, 1964	31 FR 5081	Mar. 29, 1966.
Scotland County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
Union County	Nov. 1, 1964	31 FR 5081	Mar. 29, 1966.
Vance County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
Washington County	Nov. 1, 1964	31 FR 19	Jan. 4, 1966.
Wayne County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
Wilson County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
South Carolina	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
South Dakota:			
Shannon County	Nov. 1, 1972	41 FR 784	Jan. 5, 1976.
Todd County	Nov. 1, 1972	41 FR 784	Jan. 5, 1976.
Texas	Nov. 1, 1972	40 FR 43746	Sept. 23, 1975.
Virginia	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.

The following political subdivisions in States subject to statewide coverage are also covered individually:

Jurisdiction	Applicable date	Federal Register citation	
		Volume and page	Date
Arizona:			
Apache County	Nov. 1, 1968	36 FR 5809	Mar. 27, 1971.
Apache County	Nov. 1, 1972	40 FR 49422	Oct. 22, 1975.
Cochise County	Nov. 1, 1968	36 FR 5809	Mar. 27, 1971.
Coconino County	Nov. 1, 1968	36 FR 5809	Mar. 27, 1971.
Coconino County	Nov. 1, 1972	40 FR 49422	Oct. 22, 1975.
Mohave County	Nov. 1, 1968	36 FR 5809	Mar. 27, 1971.
Navajo County	Nov. 1, 1968	36 FR 5809	Mar. 27, 1971.
Navajo County	Nov. 1, 1972	40 FR 49422	Oct. 22, 1975.
Pima County	Nov. 1, 1968	36 FR 5809	Mar. 27, 1971.
Pinal County	Nov. 1, 1968	36 FR 5809	Mar. 27, 1971.
Pinal County	Nov. 1, 1972	40 FR 49422	Oct. 22, 1975.
Santa Cruz County	Nov. 1, 1968	36 FR 5809	Mar. 27, 1971.
Yuma County	Nov. 1, 1964	31 FR 982	Jan. 26, 1966.